TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1920

No. [redacted]53

THE UNITED STATES, APPELLANT,

vs.

NEDERLANDSCH-AMERIKAANSCHE STOOMVAART MAATSCHAPPIJ (HOLLAND-AMERICA LIJN).

APPEAL FROM THE COURT OF CLAIMS.

FILED AUGUST 26, 1915.

(26728)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 642.

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NEDERLANDSCH-AMERIKAANSCHE STOOMVAART MAATSCHAPPIJ (HOLLAND-AMERICA LIJN).

APPEAL FROM THE COURT OF CLAIMS.

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1 I. PETITION AND SCHEDULE "A." FILED MAY 13, 1914.

United States Court of Claims.

NEDERLANDSCH-AMERIKAANSCHE STOOMVAART MAATSCHAPPIJ (Holland-America Lijn), Claimant,
against
UNITED STATES OF AMERICA.
No. 32831.

To the Honorable Judges of the Court of Claims:

Nederlandsch-Amerikaansche Stoomvaart Maatschappij (Holland-America Lijn), claimant against the United States of America, by Lucius H. Beers, its attorney, for its petition, respectfully shows to the court and alleges:

First. At all the times hereinafter mentioned, petitioner was and still is a steamship company, organized under the laws of and a citizen and subject of the Kingdom of Netherlands, with its principal place of business at Rotterdam, Holland, and a place for the transaction of business at 8 Bridge Street, city of New York, United States of America. At all such times petitioner's business was the transportation of passengers and freight between Rotterdam and New York.

Second. Between January 1, 1908, and December 4th, 1913, petitioner thus transported many aliens into the United States. The United States immigration officials temporarily detained some of said aliens in various hospitals because they were alleged to be suffering from temporary illnesses or diseases or accompanied aliens who were so suffering; and subsequently decided that such aliens had legally been brought to the United States and consequently permitted them to enter the United States. Said aliens were so detained and
2 subsequently admitted, under an act of Congress entitled "An act to regulate immigration of aliens into the United States," approved February 20, 1907, hereinafter referred to as the immigration act. The Secretary of Commerce and Labor and the Commissioner General of Immigration and their subordinates, claiming to act under the alleged authority of the immigration act and pursuant to various decisions, opinions, letters, circulars, rules and regulations issued by them from time to time, rendered to the petitioner from month to month during the aforesaid period, bills for the hospital treatment and maintenance of the aliens so detained and subsequently admitted as aforesaid. A portion of rule 13 in regulations of the Commissioner General of Immigation, dated June 7, 1909, summarizes and epitomizes the theory and pretended authority upon which such bills were rendered, and is as follows:

"Bills for hospital treatment and maintenance shall be rendered monthly by hospitals against the steamship companies responsible,

through the office of the Commissioner of Immigration or inspector in charge, the latter's approval to be attached to the bills, if found correct, before forwarding them to the companies for settlement. Officers of the Immigration Service will in all such cases look to the steamship companies for settlement of the hospital bills. If any steamship company refuses to pay such bills rendered with the approval of the immigration officials, it will, of course, be necessary to require thereafter that all aliens brought by the vessels of such company shall be held on board ship until their applications for admission have been finally adjudicated."

Said officials threatened that, if said bills were not paid, thereafter all aliens brought by the vessels of the petitioner would be held on board ship until their application for admission to the United States should be finally adjudicated. On all petitioner's vessels arriving in the port of New York during the aforesaid period, there were
3 aliens who were temporarily detained and subsequently admitted as aforesaid. Their detention on board ship would have delayed the sailing of petitioner's vessels for periods varying from a few days to several weeks. If said threats (which were actually carried out in at least one instance in the port of New York, as an example and warning to the steamship companies) had been carried out, the result would have been, not merely great inconvenience and financial loss to the petitioner and other steamship companies similarly situated, but a complete disruption of oceanic commerce in the port of New York and the United States. Consequently, the petitioner paid, under duress and involuntarily, the bills, when rendered. Such payments were made monthly by checks to the order of the person who for the time being was Commissioner of Immigration.

Third. The exaction of such payments from the petitioner and the making of such threats were entirely without warrant of law. The immigration act provides that where a suitable building is used for the detention and examination of aliens, the immigration officials shall there take charge of such aliens and the transportation companies shall be relieved of the responsibility for their detention thereafter. During all the times aforesaid, there was in the port of New York a suitable building used for the detention and examination of aliens. The immigration act required the petitioner to pay to the collector of the port $4.00 for each alien entering the United States upon a vessel of the petitioner, and provided that said moneys should constitute a permanent appropriation to be called the "Immigrant fund" to be used to defray the expense of regulating the immigration of aliens into the United States. The aliens whose hospital and maintenance expense bills were rendered to and paid by the petitioner as aforesaid, were detained and examined and subsequently admitted to the United States pursuant to the requirements of

immigration act, and the acts of the immigration officials with reference thereto constituted the regulation of the immigration of
4 aliens into the United States, and all expenses incurred therein and thereby were required by law to be paid out of the aforesaid "Immigrant fund." By an act of Congress, known as the appropriation bill of March 4, 1909, provision was made by which the aforesaid tax of $4.00 for each alien should be paid into the Treasury of the United States to the credit of miscellaneous receipts, to the end that Congress and not the Secretary of the Treasury, as theretofore, should control the "Immigrant fund," but in said act of March 4, 1909, a special appropriation was made for all expenses of the enforcement of the laws regulating the immigration of aliens into the United States, and similar appropriations have ever since been made in the succeeding annual appropriation acts, so that there has always been an available fund in the United States Treasury for the payment of the expenses of regulating the immigration of aliens into the United States, included among which expenses are the hospital bills above referred to.

Fourth. For more than twenty years steamship companies transporting aliens to the United States, including the petitioner, have claimed that they were not liable for such hospital charges. In March, 1909, the then Secretary of Commerce and Labor, in a case which by mutual arrangement was made a test case, decided that such hospital charges must be paid by the United States and not by the steamship companies. Thereupon the steamship companies refused to pay any further such hospital charges until in the latter part of 1909 the successor of said Secretary of Commerce and Labor restored the former rule and required the steamship companies to resume the payment of such hospital charges under penalty of having such aliens detained on board ship until regularly admitted to the United States. Such rule has every since been in force.

Fifth. On December 5, 1910, the United States brought an action in the United States District Court for the Southern District of New York, against this petitioner to recover the hospital
5 charges of aliens brought to the port of New York by this petitioner and temporarily detained and subsequently admitted in the manner aforesaid, during the period between March, 1909, and October, 1909, while there was in force the rule exempting such steamship companies from paying such charges. Said court gave judgment for this petitioner and held that the immigration act requires such charges to be paid by the United States and not by the steamship company. From this judgment the United States appealed to the Circuit Court of Appeals, which court affirmed the decision of the District Court.

Sixth. Petitioner is advised by counsel that under the laws and statutes of the United States as interpreted in said case of the

United States of America against Holland American Line, the exaction from the petitioner of the above mentioned hospital charges under duress was in violation of the rights and privileges secured to the petitioner as a subject of the Kingdom of the Netherlands under the Constitution of the United States, the treaties between the United States and the Kingdom of the Netherlands and the laws of the United States.

Seventh. The amounts thus unlawfully exacted from the petitioner and paid by it under duress for the detention and treatment of said aliens, legally brought but temporarily detained in hospitals and later admitted to the United States, were remitted monthly to the Commissioner of Immigration at the port of New York as required by him. The amount of each monthly remittance is set forth in the schedule hereto annexed and made a part of this petition and marked "Schedule A." The total amount so paid by the petitioner within six years prior hereto, as shown by said schedule, is $19,523.15. All of said sums were paid for charges for the treatment and temporary detention of said aliens legally brought and later allowed to enter the United States, and each alien for whose detention any part of said sum was paid was legally brought and subsequently allowed to enter the United States and none of said aliens was deported. All of said amounts were paid over to and are now in the possession of the United States and have not been returned to the petitioner though due demand therefor has been made.

Eighth. The Kingdom of the Netherlands by its laws and statutes accords to citizens of the United States the right to institute and prosecute suits and claims against the Government of the Kingdom of the Netherlands in the Kingdom of the Netherlands for moneys due and in such proceedings judgment may be recovered against the Kingdom of the Netherlands.

Ninth. Petitioner has not in any way voluntarily aided, abetted or given encouragement to rebellion against the Government of the United States; no assignment or transfer of the claim herein made or any part thereof, has been made at any time to any person or party; petitioner is justly entitled to the amounts herein claimed from the United States after allowing all just credits and offsets and no other person, persons or corporation other than petitioner is the owner of the claim herein set forth or in any way interested therein; and no part of the moneys so paid by the petitioner as claimed herein has ever been repaid to the petitioner or for the account or advantage by the United States; and by reason of the facts aforesaid the sum of $19,523.15 is now due and owing to the petitioner from the United States.

Wherefore petitioner demands judgment against the United States of America for the sum of $19,523.15 and all proper relief in the premises.

By Wm Van Doorn.

Nederlandsch-Amerikaansche Stoomvaart Maatschappij (Holland-America Lijn),
Claimant.

Lucius H. Beers,
Attorney for Claimant, 49 Wall Street, New York, U. S. A.

7 State of New York,
County of New York, ss:

W. Van Doorn being duly sworn, deposes and says: I am the agent and attorney-in-fact of Nederlandsch-Amerikaansche Stoomvaart Maatschappij (Holland-America Lijn), the petitioner and claimant in this case. I am personally familiar with the details of this claim and all the facts connected therewith. I believe that all the facts stated in the foregoing petition are true.

The reason why this verification is made by me is that the petitioner is a foreign corporation and none of its officers are within the State of New York or the District of Columbia, or any other portion of the United States. I have been duly authorized by power of attorney, executed by the petitioner, to verify this petition and prosecute this case. Said power of attorney is annexed hereto and filed herewith.

W. Van Doorn.

Subscribed and sworn to before me this 11th day of May, 1914.

[seal.] E. H. Pollaci,
Customs Notary, Kings County, N. Y.

Certificate filed in New York County.

8 Schedule A.

Date of payment.	Amount paid.
1908.	
May 27	$440.75
June 29	222.25
July 17	363.00
Aug. 19	336.75
Sep. 29	1,031.40
Oct. 19	404.00
Dec. 4	225.00
31	403.75
1909.	
Jan. 25	392.00
Mar. 1	479.50
Apr. 14	332.75
29	562.25
June 7	464.25

Date of payment.	Amount pai
1909	$613.
July 30	295.
Aug. 28	1,259.
Sep. 30	
1910.	342.
Jan. 15	31.
Feb. 25	24.
" "	152.
Mar. 4	120.
18	111.
Feb. 15	123.
Mar. 10	106.
Apr. 22	89.
May 30	22.
July 23	232.
" "	246.
" "	179.
Nov. 30	219.
Dec. 22	93.
Nov. 30	107.
" "	
9 1911	90.
Jan. 16	83.
" "	62.
Feb. 18	57.
Mar. 9	109.
Apr. 21	67.
May 26	120.
Aug. 16	155.
" "	137.
Sept. 22	78
" "	396
Nov. 22	481
Dec. 22	319
" "	
1912	265
Jan. 30	272
Feb. 16	193
Apr. 5	175
25	223
June 13	384
July 13	371
Aug. 27	378
" "	242
Oct. 31	144
23	37.
Nov. 20	79
Dec. 24	
1913	62
Jan. 23	46
Feb. 21	13
Mar. 24	29
Apr. 24	31
May 28	56
June 26	32
Aug. 6	

Date of payment.	Amount paid.
1913	
Oct. 15	$291.25
21	182.75
Nov. 19	230.75
Dec. 9	88.75
	19,523.15

10 II. GENERAL TRAVERSE.

Court of Claims.

NEDERLANDSCH-AMERIKAANSCHE STOOMVAART MAATSCHAPPIJ (Holland-America Lijn). vs. THE UNITED STATES. } No. 32831.

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendants, a general traverse is entered as provided by rule 34.

III. ARGUMENT AND SUBMISSION OF CASE.

On May 16, 1918, this case was argued and submitted on merits by Messrs. Howard Mansfield and Franklin Grady, for the claimant, and by Mr. Horace S. Whitman, for the defendants.

11 IV. FINDINGS OF FACT, CONCLUSION OF LAW, AND OPINION OF THE COURT BY HAY, J. ENTERED JUNE 3, 1918.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Findings of fact:

I.

The plaintiff at all times hereafter mentioned was, and still is, a foreign corporation and steamship company, duly organized and existing under and by virtue of the laws of, and a citizen subject of, the Kingdom of the Netherlands. Since the date of its incorporation it has continuously been, and now is, engaged in the business of transporting passengers and freight for hire between Rotterdam and the port of New York. Its principal place for the transaction of business is in Rotterdam, Holland. It also has a place for the transaction of business at No. 8 Bridge Street, New York City.

II.

Between January 1, 1908, and December 4, 1913, plaintiff transported many aliens into the United States. On arriving at the port of New York some of said aliens were found to be suffering from diseases of such a character that if they should recover therefrom they would be admissible pursuant to law, if not liable to expulsion for some other cause. Typical diseases of that character were measles, chicken pox, and scarlet fever. There were also noncontagious diseases. In various instances such aliens, because they were young children or for other reasons, required the care and attention of friends or relatives with whom they had arrived, or were accompanied by young children or other persons requiring such care.

III.

Upon their arrival at the port of New York, the commissioner of immigration at Ellis Island immigration station, New York Harbor, detailed immigration inspectors and also medical officers of the United States Public Health and Marine Hospital Service to board the vessels on which they had arrived.

12 Upon the arrival of a vessel the ship's surgeon presented to Government medical officers reports of diseases, injuries, births, and deaths among the passengers during the voyage. The medical officers thereupon examined on board the vessels the aliens (both cabin and steerage passengers) mentioned in such reports as having diseases, and also any other aliens observed by them as apparently diseased or ill. All aliens who, after such examination, were found by said medical officers to be suffering from contagious diseases, were, under order of said medical officers, temporarily removed by the claimant from the vessels to public hospitals, in or near New York City, under contract arrangements made by the proper United States authorities, whereby the hospitals charged the United States at certain agreed rates for the treatment, care, and maintenance of said aliens.

Cabin passengers were thereupon inspected and examined on board the vessels by the immigration inspectors and medical officers, and, if found by them to be free from contagious disease and to be clearly and beyond doubt entitled to land, they were permitted to land at the docks and enter the United States. The masters of the vessels removed temporarily to Ellis Island for further examination all alien cabin passengers who did not appear to be clearly beyond a doubt entitled to land. The alien steerage passengers who were not suffering from contagious diseases were all temporarily removed by Government order from the docks to Ellis Island, and were there inspected and examined by the immigration inspectors and medical officers.

After arrival at Ellis Island of the first and second cabin passengers who were temporarily removed there because they were suffering from contagious diseases or because they did not appear to be clearly and beyond a doubt entitled to land, as above stated, and after arrival at Ellis Island of the steerage passengers, except those temporarily removed to public hospitals, as above stated, they were all examined by immigration inspectors and United States medical officers. Said medical officers certified for the information of the immigration officers and boards of special inquiry all physical and mental defects and diseases observed by them. All aliens who were found to be clearly and beyond a doubt entitled to land were permitted to land and enter the United States on such primary examination. All aliens who were not found on such examination to be clearly and beyond a doubt entitled to land, including all aliens who were certified by the medical officers as having some physical or mental defect, or disease, were detained at the Immigration Hospital on Ellis Island for treatment and for further examination by a board of special inquiry.

When the aliens temporarily detained for any reason or removed to hospitals were accompanied by relatives who were dependent as stated in Finding II (supra), the accompanying aliens were required by the medical officers on humanitarian grounds to be placed temporarily in hospitals until those whom they accompanied were admitted or rejected, and were maintained and cared for in the same manner as the diseased aliens.

13 IV.

As the aliens temporarily detained in hospitals recovered from their diseases, they and the temporarily detained undiseased aliens accompanying them were discharged from hospitals and passed upon by the proper Government officials and admitted or excluded, as the case might be. Bills for their treatment, care and maintenance while so temporarily detained in hospitals were periodically presented to the claimant by the commissioner of immigration. In the case of the aliens detained in hospitals not connected with the United States Government the bills were for the exact amounts charged by such hospitals. In the case of the aliens detained in the United States Immigration Hospital, the bills presented were for the actual cost of their treatment, care, and maintenance. The services performed by the respective hospitals were necessary and worth the amounts charged. The bills as rendered included charges for transportation and charges for the care and maintenance of aliens who died during detention or were subsequently deported upon proper governmental order, but the plaintiff sues only for hospital charges paid on account of alien immigrants temporarily detained and subse-

quently admitted to the United States. Between May 27, 1908, and December 9, 1913, such bills aggregating nearly $17,000 in amount were presented to and paid by the plaintiff. The payments so made by the plaintiff to the United States Commissioner of Immigration on account of aliens subsequently admitted to the United States pursuant to the immigration laws, and covering hospital services alone not including transportation or any item other than treatment, care, and maintenance in hospitals, amounted to $16,993.50. In other words the plaintiff paid to the commissioner of immigration after May 14, 1908, and before May 13, 1914, bills amounting to $16,993.50 rendered by or with the approval of the proper officials of the United States for the treatment, care, and maintenance in hospitals (hospitals' charges exclusively) prior to October 22, 1913, of alien immigrants arriving on plaintiff's vessels and temporarily removed to and detained in hospitals by order of the properly constituted officials of the United States and ultimately admitted to the United States pursuant to the immigration act, and not deported from the United States. Said amount was so paid to and is still held by the United States, though demand therefor has been duly made.

V.

In removing the diseased aliens and those accompanying them, whose hospital charges are included in the above-mentioned sum of $16,993.50, to hospitals and detaining them there, the immigration and medical officials acted upon their honest judgment, and said aliens were examined and they and the accompanying aliens were permitted to enter the United States at the earliest moment after their reaching a sufficient state of health for the proper officer to decide that they were not subject to exclusion from the United States or any of the grounds mentioned in the immigration act.

14 VI.

From 1906 to 1913, both inclusive, the United States maintained at Ellis Island in the port of New York, suitable buildings which were then used for the detention and examination of alien immigrants. If, instead of being taken charge of in said buildings, the aliens arriving on plaintiff's vessels during said period had been examined on board ship or detained there pending their recovery to health without being removed from said vessels serious inconvenience and financial loss to the plaintiff and the public would have resulted.

VII.

Ellis Island was first used by the United States as an immigrant station in the year 1891. The hospital at Ellis Island was first used

in the year 1892. During the period covered by this case there was no contagious ward in said hospital. The practice of sending immigration inspectors and medical officers to board incoming passenger steamships at Quarantine and to inspect and examine the first and second cabin passengers aboard the vessels, the practice of inspecting and examining the steerage passengers at Ellis Island, the practice of removing temporarily to public hospitals all aliens suffering from contagious diseases and the practice of placing temporarily in the Immigration Hospital all aliens certified by medical officers as having some physical or mental defect or disease, which practices are outlined in the foregoing paragraphs, have been in effect at the port of New York since the year 1891.

VIII.

Since the opening of the immigration station at Ellis Island the question of liability of the steamship lines for hospital charges, such as are involved in this case, has been the subject of dispute between the properly constituted officers of the United States and certain steamship companies, including the plaintiff herein. On July 13, 1894, a number of steamship lines, including the plaintiff, wrote a letter to the commissioner of immigration at Ellis Island, New York, giving him notice that such companies would pay bills for the maintenance at Ellis Island of steerage passengers landed by such companies and afterwards deported. The commissioner sent a copy of this letter to the Superintendent of Immigration at Washington and asked instructions. The superintendent replied on July 20, 1894, directing the commissioner to have inspection of alien immigrants made on board vessels bringing them, or on the dock, except in case of companies which agreed to pay bills for maintenance on Ellis Island, whereupon the commissioner notified plaintiff that on and after July 23, 1894, he would cause all alien immigrants arriving on its vessels to be inspected on board the vessels or on the dock, instead of bringing them to Ellis Island for that purpose, as theretofore.

On July 23, 1894, the steamship *Edam*, belonging to plaintiff, arrived at the port of New York, and under instructions of the commissioner of immigration at New York, all alien immigrants on said ship were inspected on board the vessel.

15 On July 24, 1894, the plaintiff wrote the commissioner of immigration asking an explanation why such steerage passengers were not received and discharged from Ellis Island. To this the commissioner replied on July 24, 1894, to the effect that the letter of the various steamship lines offering to pay charges for maintenance of aliens afterwards deported had been construed as a refusal on the part of the plaintiff and other lines to pay bills for maintenance of immigrants who were detained for examination but

not finally deported. The commissioner notified plaintiff that on receipt of a satisfactory letter from it agreeing to pay maintenance charges for detained immigrants afterwards admitted to the United States, it would be permitted to send its steerage passengers to Ellis Island for examination pending the settlement of the matter of an agreement or bond which the Bureau of Immigration had proposed to require from the steamship companies.

In response to the foregoing notice, the plaintiff sent to the commissioner the following letter:

"NEW YORK, *July 25, 1894.*

"Dr. J. H. SENNER,
"*U. S. Commissioner of Immigration,*
"*Ellis Island, N. Y. Harbor.*

"DEAR SIR: In reply to your yesterday's favor I now beg to inform you that the Netherlands-American Steam Navigation Company will, until the matter is decided differently by proper authority, continue to pay the cost of maintenance pending examination at Ellis Island of all immigrants brought by their steamships to the port of New York, and that we are ready to give bond to that effect.

"Please inform me, if this meets with your requirements, so as to secure the examination of immigrants arriving by our steamers at Ellis Island, as heretofore."

To the above letter the commissioner replied as follows:

"OFFICE OF THE U. S. COMMISSIONER OF IMMIGRATION,
"*Ellis Island, New York Harbor, July 26, 1894.*

"NETHERLANDS-AMERICAN STEAM NAVIGATION COMPANY,
"*39 Broadway, New York.*

"GENTLEMEN: Replying to your letter of the 25th inst., in further reference to the payment of maintenance bills of immigrants detained at this station for examination, I beg to say that the statement made by you therein is satisfactory and that passengers arriving by vessels of your line will be examined at Ellis Island instead of upon shipboard.

"Respectfully, yours,
"(Signed) Dr. J. H. SENNER,
"*Commissioner.*"

In 1893 the Superintendent of Immigration, with the approval of the Secretary of the Treasury, adopted rules governing hospital charges incurred by aliens temporarily detained and later permitted to enter the United States. Such instructions so far as pertinent were as follows:

"RULE 1. All alien immigrants before they are landed shall be inspected and examined, as by law provided, on shipboard or at
16 a suitable place provided for the convenience of the owners of vessels transporting them and the comfort of the immigrant

where they may be temporarily placed whilst undergoing such examination. During such time, and until finally discharged and landed, said immigrants shall be deemed and treated as on shipboard, and the owners, consignee, or master of the vessel transporting them shall be liable for all expenses incurred in lodging, feeding, and caring for them, or immigrants may be remanded on board ship, or taken on board ship, by the master thereof, who shall be responsible for their safe-keeping.

"RULE 2. Upon arrival all alien immigrants shall be inspected and examined without unnecessary delay. Those qualified to land shall be promptly discharged. Those detained for special inquiry shall have a speedy hearing and be either discharged or ordered deported. If an appeal is prayed, the record of proceedings shall at once be transmitted to the Superintendent of Immigration at Washington. All expenses incurred in lodging, feeding, and maintaining alien immigrants, during the period covered by these proceedings, shall be borne by the steamship company, owner, or master of the vessel transporting them. No appeal shall be received or transmitted which is applied for after the immigrant has been transferred from the immigrant station to be deported.

"RULE 3. Upon the arrival of an alien immigrant, helpless from sickness, physical disability, or infancy, who is detained for further inquiry, one person only (if necessary) shall be detained to look after and care for such helpless immigrant, the natural guardian or a relative to be selected. The transportation company to be responsible for their maintenance, whilst so detained. The remainder of the family (if any) shall proceed on their journey or defray their own expenses.

"RULE 4. In case of an immigrant not qualified to land, but who would be entitled, upon proof of certain facts, such as the case of a woman who claims to have a husband, father, or brother, residents in this country, able and willing to support her, she may be detained a reasonable time until such husband, father, or brother can be communicated with. The transportation company to be responsible for her maintenance in such and like cases until a final decision is reached.

"RULE 5. Immigrants qualified to land shall be promptly discharged and landed, and if they desire to wait for friends or remittances they may be permitted to do so upon the payment of all costs and expenses, which should not be charged to the transportation company. In cases where an immigrant qualified to land is unable, from accident or unavoidable circumstances, to immediately continue his journey and is without sufficient means to defray the expenses of the enforced delay, the commissioner of immigration may, in his discretion, pay said expense, reporting said case to the Bureau of

Immigration with reasons for his action, and ask that such expense be paid out of the 'immigrant fund.'

"RULE 6. That in case of the arrival of sick and disabled immigrants unable to travel, said immigrants shall be removed to hospitals provided for their care, and shall be maintained at the expense of the owner or master of the vessel transporting them until sufficiently recovered either to be landed or deported, and while
17 detained in hospital shall not be considered as landed until examined and discharged, or said immigrant shall remain on shipboard until able and ready to be landed or deported.

"RULE 9. Immigrants who are detained under rules 4 and 5 (awaiting proofs, etc., or who are sick and in hospitals) should pay for their own maintenance, and the transportation company shall be held only as security for the payment of subsistence and hospital expenses. Access to such immigrants shall be permitted to an agent of said transportation company to request payment thereof, and should said immigrants refuse or be unable to pay the same, it shall be a circumstance to be considered, upon arriving at a decision in his case, as to whether he may or may not be likely to become a public charge.

"RULE 10. No charge for food, lodging, or maintenance, or for hospital attendance, medicines, or other expenses shall be made in excess of the actual cost of furnishing the same, the intention being to make the service self-sustaining without profit."

On October 24, 1894, the Secretary of the Treasury wrote the Attorney General asking his determination of the following questions:

1. Is the cost of housing, feeding, and caring for immigrants, who are detained pending final inquiry, but who are subsequently allowed to land, a proper charge against the steamship companies, or is it a proper charge against the immigration fund?

2. Are the expenses for the hospital treatment of immigrants, pending final inquiry, chargeable to the steamship owners or to the immigrant fund?

3. Are the steamship owners to be charged with the expenses of guarding the immigrants, when ordered back, until the vessel sails?

4. Are the steamship owners bound to transport these immigrants from that island to the mainland when, after inspection, the immigrants are allowed to land?

On July 24, 1897, and August 16, 1898, the Commissioner General of Immigration issued new rules relating to the maintenance and deportation of alien immigrants, but no change was made in the rules of 1893 in respect to aliens ultimately admitted.

On December 19, 1898, the attorney for the North German Lloyd Steamship Co. wrote the Secretary of the Treasury calling his attention to the rules relating to the maintenance of aliens while undergoing inspection and protested against such rules as being op-

pressive, unjust, and not in accordance to law. This letter having been placed in the hands of the Department of Justice, the solicitor wrote the Secretary of the Treasury, December 24, 1898, giving his opinion to the effect that rules 1 and 2 were in harmony with the law. March 13, 1903, the commissioner general revised the regulations regarding maintenance of aliens. The portions of the new regulations governing aliens temporarily detained and subsequently admitted are as follows:

"RULE 8. Every alien arriving at a port of the United States shall be promptly examined, as by law provided, either on shipboard or at some other place designated for that purpose. If found admissible, he shall be at once landed, but if upon special inquiry he is denied admission, he shall be informed that he has a right of appeal therefrom, and the fact that he has been so informed shall be entered of record in the minutes of the boards's proceedings, but no ap-
18 peal will be considered after any such alien has, in consequence of an adverse decision of a board of special inquiry, been transferred from an immigrant station to be deported.

"RULE 9. Every alien detained for special inquiry, which shall be conducted separate and apart from the public, shall have a speedy hearing and, upon the conclusion thereof, be either at once landed or ordered deported. If he elects to appeal from said order of deportation, he must, to enable officers to comply with the provisions of section 19 of the act of March 3, 1903, file notice of such appeal promptly, and a like right of appeal may be exercised by any member of a board of special inquiry who dissents from the decision rendered by such board.

"RULE 10. Every such notice of appeal shall act as a stay upon the disposal of the alien whose rights are thereby affected until a final decision is rendered by the department; and, within 36 hours after the filing of such notice, the record of the case, together with such briefs, affidavits, and statements as are to be considered in connection therewith should be forwarded to the Commissioner General of Immigration by the chief immigration officer at the port of arrival, accompanied by his views thereon in writing; but on such appeal of any case to the department no evidence will be considered which has not already been passed upon in said case by a board of special inquiry. If additional time is granted to the friends or counsel of an appealing alien to prevent a miscarriage of justice, the said chief officer may require the deposit of a sum of money sufficient to defray the cost of maintaining appellant during the additional time thus allowed.

"RULE 13. The expenses incurred for the keeping and maintenance of every alien temporarily removed from a vessel, as provided by law, shall be borne by the owners of the vessel upon which he came until he is lawfully landed or delivered on board such vessel for deportation.

"RULE 17. Every alien who left the port of embarkation in good physical condition, and who would be qualified to land but for some sickness or disability other than a loathsome or a dangerous contagious disease, which was contracted or which developed during the voyage, may either remain on shipboard or be removed for hospital treatment at the expense of the owners of the vessel on which he came, and while detained in hospital he shall not be considered as landed, provided that if the sickness or disability with which such alien is afflicted is so slight, in the judgment of the examining medical officer, as not to require treatment in hospital, and said alien is able to pay for the necessary medical care he needs, he shall be landed. Requests by such owners for reimbursement for hospital expenses may be made only in respect of aliens detained under the provisions this rule, and then only in a proper manner.

"RULE 19. Any alien who has been finally determined to be admissible may be permitted to wait for friends or remittances upon payment by him of expenses incurred by reason of such delay. In case such an alien is unable, from accident or other unavoidable circumstances, to immediately continue his journey and is without sufficient means to refray the expense of his enforced delay, the Commissioner of Immigration may, in his discretion, pay said expense, reporting said case to the Bureau of Immigration with rea-
19 sons for his action, and request that such expense be repaid out of the immigrant fund.

"RULE 20. Not over one accompanying alien (preferably the natural guardian or a relative) shall be detained at the expense of the transportation company for the purpose of caring for an alien who, for any reason, is detained for further inquiry, if the latter requires such care. (See sec. 11, act approved Mar. 3, 1903.)

"RULE 26. No charge for food, lodging, or maintenance or for hospital attendance, medicines, or other hospital expenses shall be made in excess of the actual cost of furnishing the same, the intention being to make the service self-sustaining without profit.

"RULE 27. Every officer of the United States Public Health and Marine-Hospital Service detailed under section 17 of the act approved March 3, 1903, for duty to any point in the United States shall, during the continuance of such detail, be under the direction (subject to the Public Health and Marine-Hospital Service regulations governing the medical inspection of aliens, as approved by the Secretary of the Treasury Nov. 18, 1902), of the immigration officer in charge of said port."

These rules continued in force until July 1, 1907, when a new body of regulations were adopted. They provide as follows:

"RULE 5. EXAMINATION OF ALIENS.— * * * Every alien arriving at a port of the United States shall be promptly examined, as by law provided, either on shipboard or at some other place desig-

nated for that purpose. Every alien who may appear to the examining immigrant inspector to be clearly and beyond a doubt entitled to land shall be at once admitted; every alien who may not appear to be clearly and beyond a doubt entitled to land shall be detained for examination by a board of special inquiry, which examination shall be promptly conducted separate and apart from the public, and, upon the conclusion thereof, the alien shall be either immediately landed or ordered excluded and returned to the country whence he came. If an appeal lies, the alien shall be informed of his right thereto, and the fact that he has been so informed shall be entered of record in the minutes of the board's proceedings. If the alien elects to appeal, he must, to enable officers to comply with the provisions of section 19, file notice of such appeal not less than 48 hours prior to the sailing of the first vessel by which his return may be effected, unless such sailing occurs less than 48 hours after the order of deportation is made. But in no event shall an appeal be considered after an alien has, in consequence of an adverse decision of a board of special inquiry, been transferred from an immigrant station to be excluded, unless such transfer has been made to prevent congestion or danger of contagion, as provided by rule 8 hereof.

"RULE 6. APPEALS.—An appeal may be taken from any decision of a board of special inquiry which determines whether an alien shall be admitted or excluded, by the alien himself or by a dissenting member of the board; but no appeal may be taken from a decision of a board of special inquiry, based upon the certificate of the examining medical officer, whereby an alien is rejected as being affected with tuberculosis or with a loathsome or dangerous contagious disease, or with any mental or physical disability which would bring such alien within any of the following excluded classes: Idiots, imbeciles, feeble-minded persons, epileptic, insane persons, persons who have been insane within five years previous, persons who have had two or more attacks of insanity at any time previously, persons certified as having a mental or physical defect which may affect the ability of the person to earn a living; but as to aliens coming within the last-mentioned class, namely, persons laboring under physical disability, they may nevertheless be admitted, in the discretion of the secretary, as provided in rule 20 hereof.

"RULE 7. APPEALS, PROCEDURE.—Notice of appeal shall act as a stay of all proceedings until a final decision is rendered by the Secretary; and, within 48 hours after the filing of such notice, the complete record of the case shall be forwarded to the Commissioner General of Immigration by the immigration officer in charge at the port of arrival, accompanied by his views thereon in writing; but on such appeal of any case to the Secretary no evidence will be considered which has not already been passed upon in said case by a board of

special inquiry at the original hearing, or upon a rehearing if so ordered. (See sec. 25.) If, to prevent a miscarriage of justice, additional time is granted to the friends or counsel of an appealing alien, the said immigration officer may require the deposit of a sum of money sufficient to defray the cost of maintaining appellant during the additional time thus allowed.

"RULE 9. MEDICAL EXAMINATIONS.—Officers of the United States Public Health and Marine-Hospital Service (or, if such officers are not available, civil surgeons of not less than four years' professional experience) are required by section 17 of the immigration act to make a physical and mental examination of all arriving aliens, and to certify for the information of immigration officers any and all physical and mental defects or diseases observed by them. Every officer of such service detailed for this duty shall, subject to the instructions of the Surgeon General of the Public Health and Marine-Hospital Service, be under the direction of the immigration officer in charge of the port to which he may be detailed.

"The certificate of the medical officer shall state the physical or mental defect or disease observed, specifying the name by which it is known in common speech as well as the name by which it is known in medicine; and the certificate shall also state:

"(a) Where an alien is certified as having been insane within five years previous, or as having had two or more attacks of insanity at any time previously, how the previous existence of the malady has been ascertained (sec. 2);

"(b) Where an alien is certified as being afflicted with a loathsome or dangerous contagious disease, that the disease named is in fact a loathsome or dangerous contagious disease, and is or is not of a quarantinable nature (secs. 2, 19);

"(c) Where an alien is certified as having a mental or physical defect of a nature which may affect his ability to earn a living, or as being likely to become a public charge by reason of any mental or physical disability, the bearing of such mental or physical shortcoming upon the customary occupation of the alien and upon his general capacity for useful employment, whether such defect is of a temporary or permanent nature, and whether the deficiency of the alien has been corrected by artificial or educational means (secs. 2,
21 "(d) Where an alien is certified for permission to land for medical treatment in any hospital of the United States, or where it is certified that the health or safety of an insane alien would be unduly imperiled by immediate deportation, that the alien is not suffering from tuberculosis or from a loathsome or dangerous contagious disease of a nonquarantinable nature, and the probable duration of the alien's detention in hospital, asylum, or elsewhere (sec. 19);

"(e) Where an alien is certified as being helpless from sickness, mental or physical disability, or infancy, whether such alien requires the protection or guardianship of an attendant (secs. 11, 21);

"(f) Where the life or minor children of a domiciled alien are certified as being affected with any contagious disorder whether such disorder is a loathsome or a dangerous one, the probable length of time needed to determine whether the disorder will be easily curable, and whether they can be permitted to land without danger to other persons (sec. 37); and

"(g) Where an alien is certified as being an idiot, imbecile, epileptic, or afflicted with tuberculosis or with a loathsome or dangerous contagious disease, whether the alien was so afflicted at the time of foreign embarkation, whether the existence of the disease or disability might have been detected by means of a competent medical examination at such time, how the previous condition of the alien has been ascertained, and the ground for believing that it might have been detected by a competent examination.

"RULE 10. LANDING FOR HOSPITAL TREATMENT.—Where an alien has been excluded by decision of a board of special inquiry, and where the order for the return of the alien has been suspended, or where the alien is held, pending the determination of his case, by order of court, to await transportation, on account of his health, because his testimony is required in the prosecution of offenders against the act, or for some other cause, an application may be made, accompanied by the certificate of the medical examiner, to the Secretary of Commerce and Labor for permission to allow the landing of the alien for hospital treatment or other appropriate care or attention. This application will be granted as of course where it is certified by the medical examiner that the health or safety of an insane alien would be unduly imperiled by immediate deportation, or whether it is manifest to the commissioner of immigration, or the immigration officer in charge, that the condition of the alien requires immediate hospital treatment. In such cases, pending the decision of the Secretary, hospital treatment or other appropriate care or attention shall be immediately afforded. In all other cases the application will not be granted unless it clearly appears from the report of the commissioner of immigration, or the immigration officer in charge, or from other evidence accompanying the application that such a course is necessary to meet the ends of justice and humanity. The landing or detention of an alien for the purpose contemplated by this rule shall not be construed in any manner to alter the status of the alien with reference to his right to enter or remain in the United States (sec. 19).

"RULE 11. DETENTION OF SICK WIVES OR CHILDREN.—Where, upon the arrival of the wife or minor child or children sent for by a domiciled alien, any of the former are found to be afflicted with a contagious disorder and it can not be immediately determined

whether the disorder will be easily curable, they shall be held
22 until a determination can be had, and an application may be made accompanied by the certificate of the medical examiner, to the Secretary of Commerce and Labor for permission to allow the landing of such wife or child for hospital treatment or other appropriate care or attention. In such cases, where necessary, pending the decision of the Secretary, hospital treatment or other appropriate care or attention shall be immediately afforded. This application, or the accompanying papers, must clearly show that the husband or father has actually taken up his permanent residence in this country and has actually filed his declaration of intention to become a citizen of the United States, and that he is in fact the husband or father of the alien in question. Nothing contained herein shall be taken as in any manner affecting the liability of transportation companies under section 9 of the immigration act, or as altering the status of the aliens concerned with reference to their admission or exclusion. (See rules 10 and 12.)

"RULE 12. DETENTION OF ATTENDANTS FOR HELPLESS ALIENS.—Where it is found that an alien is helpless from sickness, mental or physical disability, or infancy, and that, if excluded, he will require the protection and guardianship of an attendant upon his return to the country from whence he came, if the alien arrives accompanied by others, not more than one of such accompanying aliens (preferably a natural guardian or relative) shall be detained to act if, in the judgment of the commissioner of immigration or the immigration officer in charge, such detention is necessary. Such detention shall not be deemed necessary, but is permissible, in quarantinable cases. If the alien arrives unaccompanied, a suitable person shall be employed for the purpose. The expense incident to such detention or employment and to the transportation involved shall be borne by the transportation company. (Secs. 11, 19, 21.)

"RULE 13. DISABLED ALIENS, PROCEDURE.—A disabled alien within the purview of rules 10, 11, and 12 hereof may be afforded the required medical treatment on board ship or in the detention quarters or may be removed to a suitable hospital for treatment, as in his discretion the commissioner of immigration or inspector in charge at the port may decide is required by existing circumstances and the condition of the alien's health as reported upon by the surgeon charged with the medical examination of aliens at such port. If such an alien is removed to a hospital, he shall not be regarded as in any sense landed, and the cost of his maintenance and care there must be paid by the transportation company by which he is brought to the port to the same extent as though he were held on board ship or in a detention station.

"If in the judgment of the commissioner or inspector in charge, based upon the expressed opinion of the medical examiner, it is neces-

sary as a measure of humanity or for the proper care of the alien so removed to hospital to also place in the hospital a suitable attendant or some person who is dependent upon the disabled alien, or the reverse, the cost of the detention in hospital of such additional person must also be borne by the interested transportation company. Bills for hospital treatment and maintenance in such cases shall be rendered monthly by the hospital against the steamship companies responsible, through the office of the commissioner or inspector
23 in charge, the latter's approval to be attached to the bills, if found correct, before forwarding them to the companies for settlement, in accordance with the provisions of section 19 of the immigration act. Officers of the Immigration Service will in all such cases look to the steamship companies for settlement of the hospital bills, and will take no part in any arrangements affecting the matter which such a company may have made or may make with the alien or his friends. If any steamship company refuses to pay bills for hospital treatment rendered against it, with the approval of the immigration officials, as prescribed in this rule, it will, of course, be necessary to require thereafter that all aliens brought by the vessels of such company shall be held on board ship until their applications for admission have been finally granted or denied.

"RULE 15. ASSISTANCE TO ADMITTED ALIENS.—Any alien who has been admitted may be permitted to wait for friends or remittances upon payment by him of the actual expenses incurred by reason of such delay. In case such an alien is unable, from accident or other unavoidable circumstances, to immediately continue his journey, and is without sufficient means to defray the expense of his enforced delay, the commissioner of immigration may, in his discretion, pay such expense, reporting said case to the Bureau of Immigration and Naturalization with reasons for his action, and request that such expense be repaid out of the immigration fund.

"RULE 16. CHARGES FOR CARE AND MAINTENANCE.—At ports where the Immigration Service maintains hospitals no charge for food, lodging, or maintenance, or for hospital attendants, medicines or other hospital expenses shall be made in excess of the actual cost of furnishing the same, the intention being to make the service self-supporting without profit.

"RULE 20. ADMISSION UNDER BOND.—Where an alien is liable to be excluded because likely to become a public charge or because of physical disability, and it is found that the alien is not afflicted with tuberculosis or with a loathsome or dangerous, contagious disease, and that he is otherwise admissible, and, after notice of his right to do so, the alien signifies his intention of applying for admission under bond, the board of special inquiry shall not pass upon the alien's right to enter as in other cases, but shall make a special finding of fact in the premises and report the same, including the certificate of

the medical examiner, to the immigration officer in charge, who shall forward the report, together with his recommendation, to the Secretary of Commerce and Labor, through the Commissioner General of Immigration. If, in the exercise of the discretion conferred by law, the Secretary decides to admit the alien, a bond will be required in an amount which in no case shall be less than $500, and the sureties thereto shall be parties of known and ascertained responsibility and approved by the commissioner of immigration or immigration officer in charge. The bond shall be executed in duplicate on forms supplied by the bureau, but shall not be accepted until authorized by the department."

On October 5, 1908, the rules of July 1, 1907, were superseded by new rules. Rule 5 of the new rules provided that every alien on arriving at a port of the United States should be examined, as by law provided, either on shipboard or at some place designated for that purpose.

24 Rule 13 is as follows:

"DETENTION AND TREATMENT OF ALIENS, PROCEDURE AND EXPENSE OF.—(a) A disabled alien, within the purview of rules 10, 11, and 12 hereof, may be afforded the required medical treatment on board ship or in the detention quarters, or may be removed to a suitable hospital for treatment, as in his discretion the commissioner of immigration or inspector in charge at the port may decide is required by existing circumstances and the condition of the alien's health as reported upon by the surgeon charged with the medical examination of aliens at such port. If such an alien is removed to a hospital, he shall not be regarded as in any case landed, and the cost of his maintenance and care there must be borne in one of the several ways hereinafter specified, as the circumstances of the case may require.

"(b) If in the judgment of the commissioner or inspector in charge, based upon the expressed opinion of the medical examiner, it is necessary as a measure of humanity or for the proper care of an alien removed to hospital to also place in the hospital a suitable attendant or some person who is dependent upon the disabled alien, or the reverse, the cost of the detention in hospital of such additional person must be borne in the same manner as the cost of treating the disabled alien.

"(c) The expenses involved in detaining or treating aliens shall be borne as follows: (1) By the immigrant fund: In case of (aa) those held as witnesses under section 19 and rule 14; (bb) insane aliens whose health or safety would be unduly imperiled by immediate deportation (sec. 19); (cc) wives and minor children of aliens who have declared intention or minor children of naturalized citizens born abroad prior to naturalization of parent (sec. 37 and rule 11; Op. Compt., Jan. 15, 1908). (2) By the alien: Those treated by

'express permission' of the Secretary, under section 19, although afflicted with tuberculosis or a loathsome or dangerous contagious disease, in accordance with the provisions of rule 10 (Op. Compt., Jan. 15, 1908). (3) By the alien, preferably, but by immigrant fund under special authority: Aliens whom it is necessary for any reason to hold at a port of entry, after admission, in accordance with rule 15. (4) By steamship companies: Aliens not falling within any of the foregoing classes whom it is necessary for any reason to hold or to treat in hospital pending determination of right to land, or awaiting deportation under order of rejection of a board of special inquiry or of the department (sec. 19).

"(d) Covering cases of the character mentioned in class (4) of the preceding paragraph, bills for hospital treatment and maintenance shall be rendered monthly by hospitals against the steamship companies responsible, through the office of the commissioner of immigration or inspector in charge, the latter's approval to be attached to the bills, if found correct, before forwarding them to the companies for settlement. Officers of the Immigration Service will in all such cases look to the steamship companies for settlement of the hospital bill. If any steamship company refuses to pay such bills rendered with the approval of the immigration officials, it will, of course, be necessary to require thereafter that all aliens brought by the vessels of such company shall be held on board ship until their applications for admission have been finally adjudicated.

25 "RULE 16. CHARGES FOR CARE AND MAINTENANCE.—At ports where the Immigration Service maintains hospitals, no charge for food, lodging, or maintenance or for hospital attendance, medicines, or other hospital expenses shall be made in excess of the actual cost of furnishing the same, the intention being to make the service self-supporting without profit.

"RULE 20. ADMISSION UNDER BOND.—If, in following the provisions of rule 6 hereof relating to appeals, the board of special inquiry reaches the conclusion that an alien in whose case a medical certificate for some physical defect, other than tuberculosis or a loathsome or dangerous contagious disease, has been rendered is excludable solely because such certified physical defect is, in the board's opinon, 'of a nature which may affect the ability of such alien to earn a living,' or render him liable to become a public charge, but that such alien is otherwise admissible, and, after notice of his right to do so, the alien signifies an intention to apply for admission under bond, the board shall not enter an excluding decision against the alien as in other cases, but shall make a special finding of fact in the premises and report the same, including the certificate of the medical examiner, to the immigration officer in charge, who shall forward the report, together with his recommendation, to the Secretary of Commerce and

Labor, through the Commissioner General of Immigration. (See secs. 10 and 29 and rule 6.)

"If in the exercise of the discretion conferred by law, the Secretary decides to admit the alien, a bond will be required in an amount which in no case shall be less than $500.

"The sureties thereto shall be parties of known and ascertained responsibility and approved by the commissioner of immigration or immigration officer in charge. The bond shall be executed in duplicate on forms supplied by the bureau, but shall not be accepted until landing of the alien under bond is authorized by the department.

"If, within a reasonable time, not to exceed thirty days, after the receipt of the department's authority for the landing of an alien under bond, there is not forthcoming bond with acceptable sureties, that fact, and all others that may have a bearing upon the matter, shall be reported to the department, with request for instructions; and if in any such case the former decision of the department is reversed the alien shall then be formally rejected by the board.

* * * * * * *

"F. P. SARGENT,
"*Commissioner General of Immigration.*

"Approved October 5, 1908.

"OSCAR S. STRAUS,
"*Secretary.*"

On October 19, 1907, an alien immigrant, named Andras Toth, arrived in New York with his wife and three children on the Cunard steamship *Slavonia*. He had erysipelas and was sent to a hospital, where he remained until November 12. From there he was removed to the Immigration Hospital on Ellis Island, where he remained until November 19. In the meantime, his wife and three children were detained at Ellis Island, where, on November 11, she and one child were sent to the Immigration Hospital, from which they were discharged on November 13. On the latter day the child who had
26 accompanied the mother to the Immigration Hospital was transferred to a New York hospital to be treated for measles. This child was detained in said hospital until December 27. On December 28 the entire family was permitted to enter the United States. The commissioner of immigration at Ellis Island insisted that the hospital maintenance bills of the entire family, from the time of their arrival on October 19 to the time of their discharge on December 28, should be paid by the Cunard Steamship Co. The Cunard Steamship Co. declined to pay, and the matter remained in abeyance until the summer of 1908, when the commissioner of immigration at Ellis Island definitely ruled that the Cunard Steamship Co. must make payment of all the bills.

From this ruling of the commissioner, the Cunard Co. appealed to the Secretary of Commerce and Labor, then the Hon. Oscar S. Strauss. About March 3, 1909, Secretary Strauss, on an opinion rendered by the solicitor for the department, the Hon. Charles Earle, adopted the view of the Cunard Steamship Co. and wrote the following letter to the counsel of the Cunard Steamship Co.:

"OFFICE OF THE SOLICITOR,
"DEPARTMENT OF COMMERCE AND LABOR,
"*Washington, D. C., March 3, 1909.*

"3778
"LUCIUS H. BEERS, Esq.,
"*49 Wall St., New York City.*

"DEAR MR. BEERS: I have to acknowledge the receipt of your letter of February 24, 1909, and in excuse for my failure to make an earlier reply I beg to say that, although I submitted to the Secretary a second memorandum relating to the subject in question on February 16, 1909, the Secretary being engrossed with other matters, had not disposed of it when your letter was received and when I again brought the matter to his attention. I have only to-day learned that the Secretary has adopted the views expressed by me in the premises, which were favorable to your contention. My notion of the matter you will gather from the following extract from my memorandum of February 16:

"Having in mind that, apart from deportation cases, there is only one provision of law which makes the steamship companies responsible for the maintenance of aliens, while on land, namely, that clause of section 19, which reads, 'the cost of their maintenance while on land, as well as the expense of the return of such aliens, shall be borne by the owner or owners of the vessels on which they respectively came,' that this provision applies only to 'aliens brought to this country in violation of law,' and that the same section further provides that such aliens 'shall, if practicable, be immediately sent back to the country whence they respectively came on the vessels bringing them,' I was unable to see how the transportation companies could legally be called upon to pay the expense of maintaining aliens in hospital until a cure is effected in cases where the aliens have not been brought to the United States in violation of law. I did not mean to imply that a sick alien should not be detained long enough to enable the examining medical officer and the board of special inquiry to determine definitely the nature of the alien's affliction and the question as to his admissibility, or that the steam-
27 ship company is not responsible for the expenses incident to detention for that purpose; I merely wished to say that I could find no authority for holding in hospital, for an indefinite period

and until a cure is effected, at the expense of the transportation company, an alien who belongs to none of the excluded classes. It seemed to me, moreover, that some mode of procedure should be adopted, whereby it would be possible to distinguish those cases in which it is necessary to detain the alien for a certain length of time in order to pass upon the question of his admissibility, from those cases in which it is merely necessary, on humanitarian grounds, to furnish the alien with medical treatment for some temporary affliction. In my previous memorandum I suggested that 'the proper procedure to be followed in such cases would seem to be to formally enter of record the decision whereby the alien is declared admissible to the United States, notwithstanding the fact that it may be necessary for the time being to detain the alien for hospital treatment. The expenses of such hospital treatment, moreover, would appear to be a proper charge upon the immigrant fund.' It may well be that some other mode of procedure would be better adapted to accomplish the same purpose, and would be open to fewer objections. For example, it may be desirable to continue the present practice of deferring the decision as to the alien's admissibility upon his discharge from hospital, but in that event, in my judgment, a means should be devised of making the decision admitting the alien effective from a date when all the essential facts necessary to a determination of the question were first ascertained. If this were done, all expenses incurred prior to the date mentioned would be properly chargeable to the transportation company, and all expenses subsequent to that date might be charged to the immigrant fund.

"Very truly, yours,

"CHARLES EARL, *Solicitor.*"

In or about the month of July, 1909, the plaintiff discontinued the payment of bills for hospital charges for aliens not deported, and on September 16, 1909, certain steamship companies, including the claimant, wrote a letter to the commissioner of immigration at Ellis Island, as follows:

"NEW YORK, *September 16, 1909.*

"Hon. WILLIAM WILLIAMS,
"*Commissioner of Immigration, Ellis Island.*

"DEAR SIR: We, the undersigned, beg to invite your attention to the decision of the Secretary of Commerce and Labor in the case of the appeal of the alien Andreas Toth and family, since that determination necessarily affects the question of our responsibility for bills, the payment of which has heretofore been demanded by the Bureau of Immigration.

"In the Toth case, an appeal to the Secretary was taken by a steamship company for the purpose of determining the question whether the company is liable, under the immigration act of 1907, for the ex-

pense of maintenance and hospital treatment of an alien, who, on landing, is found to be afflicted with an apparently temporary sickness, requiring treatment, but not warranting his deportation. The contention of the company which pressed that appeal was, that such aliens have not been brought in violation of law and that negli-
28 gence can not be attributed to the steamship company in such case, and, therefore, that Congress, by the immigration act, has not imposed such expense on the steamship companies, but has created the immigrant fund to provide for them.

"We are informed that the appeal in the Toth case resulted in the adoption by the Secretary of views favorable to the contention of the company, and from this it follows that the expense of maintenance and treatment in such cases are not legally charges against steamship companies. Under these circumstances, we feel obliged to notify you that we can not be responsible for such expenses, except for a period long enough to enable the examining medical officer to determine definitely the nature of the alien's affliction.

"We respectfully urge that the result of the decision of the Toth appeal need not affect those cases where, on humanitarian grounds, it is desirable to furnish an alien, who is not deportable, with medical treatment for some temporary affliction. The immigrant fund, which has been collected by the transportation companies and has been paid by the immigrants themselves for the express purpose of meeting such expenses, is more than sufficient for the purpose, and by the immigration act Congress has declared it to be a permanent appropriation to be used under the direction of the Secretary to defray the expense of regulating the immigration of aliens.

"We also beg to notify you that we are prepared to adjust bills, heretofore rendered, on the basis of the decision in the Toth case."

The commissioner of immigration on Ellis Island referred the matter to the Secretary of Commerce and Labor, who, on October 9, 1909, obtained from the Comptroller of the Treasury a ruling to the effect that such expenses were not a proper charge against the appropriation for the expenses regulating immigration.

The latter part of October, 1909, the commissioner requested the counsel for claimant of the steamship lines to attend a conference at Washington, at the office of the Secretary of Commerce and Labor. This conference was held October 26, 1909, and Lucius H. Beers, counsel for the claimant, was informed at such conference by the Acting Secretary that unless the companies, including the claimant, would agree to pay the bills for hospital treatment, care and maintenance, the aliens found to be suffering from "nondeportable" diseases would be detained on board ship. Counsel then said he would advise the company to pay such charges of aliens arriving after October 26, 1909, until the matter could be further considered and

the companies could agree on some line of action; thereupon he so advised such steamship lines.

"DEPARTMENT OF COMMERCE AND LABOR,
"IMMIGRATION SERVICE, OFFICE OF THE COMMISSIONER,
"*Ellis Island, New York, N. Y., November 1, 1909.*

"LUCIUS H. BEERS, Esq.,
"*49 Wall St., New York City.*

"SIR: I have written to Washington for information as to how the Government may receive advance deposits from steamship companies in reference to hospital bills which accrue. Serious complications are likely to arise if this be done in the wrong way, and some time may elapse before the matter is settled. It will require
29 still further time, if the practice be adopted, for the steamship companies and this office to agree upon the amounts to be deposited and the terms on which deposits are made. In the meantime hospital bills are daily accruing in reference to immigrants detained for infectious diseases, such as measles, scarlet fever, and diphtheria. If the steamship companies decline to pay these bills the Government will find it necessary to alter materially the existing methods of dealing with immigrants suffering from such diseases. Of this I gave oral notice several weeks ago and repeated it last Tuesday (October 26) when we were together in the Secretary's office in Washington. At that time you stated (in substance) that pending consideration by the steamship companies as to whether or not they would continue to pay such hospital bills in accordance with recent practice you would recommend to them that they raise no question as to those accruing between October 26 and such time as they should notify me of their decision, and it was upon this condition that the Government agreed to defer for the present issuing an order that immigrants so diseased should be detained on board ship. I shall assume that your recommendations have been followed. Any of these steamship companies desiring not to follow them as to the future may so inform me and I shall then proceed at once to do whatever is proper to prevent bills being incurred which your clients say they will not pay and which the comptroller says the Government has no means of paying.

"During Saturday's conference at Ellis Island it was stated by you (if I mistake not) that in the event of the lines declining to continue to pay hospital bills according to recent practice they would request that patients of the classes here under discussion be held in hospital only until such time as the nature of the disease could be determined; that their cases be then disposed of forthwith by the immigration authorities, and in case of exclusion that deportation occur without delay. In the event stated I should be unable to com-

ply with this request for the reason amongst others, that in a great majority of cases the immigrants would be excluded, and this at a time when they would be too sick to be removed from hospital to the steamship for deportation. Humanitarian reasons might require their detention in hospital beyond the time when the lines would pay the bills, and, as a result, the Government would be compelled to sue for them. Not only does it not wish to become involved in such a mass of litigation as might result from this course, but the comptroller has decided that it has no right to pay these bills out of its own funds. In view of all these facts it will probably become necessary to forbid the landing of all sick immigrants whose hospital bills the steamship companies may decline to pay.

"One or two members of the committee that called Saturday intimated that our hospital detentions were in some instances unduly long. I am unwilling to assume, in the absence of proof, that any Federal or municipal surgeon is knowingly detaining an immigrant in hospital longer than is proper. If you will submit to me any instances of cases as to which this is now occurring I shall be glad to look into them personally and report to you my conclusions.

"Respectfully,

"(Sgd) WM. WILLIAMS,
"*Commissioner.*"

30 Mr. Beers, on November 3, 1909, wrote the commissioner proposing that an agreement be made whereby the steamship lines would maintain with the Government sufficient deposits from which should be paid amounts payable to them under the immigration act, leaving to be disposed of later a question of liability for hospital and detention charges in cases where the aliens were ultimately admitted, and he inclosed proposed forms of letters to be used by the companies in sending such deposits. Mr. Beers also proposed to have a test case made and tried to settle the question of such liability. To that letter the commissioner replied November 8, 1909, disapproving the proposals submitted by Mr. Beers.

On November 13, 1909, the Secretary of Commerce and Labor, the Hon. Charles Nagel, wrote to the commissioner of immigration at New York, and after referring to the opinions rendered by the solicitor of the department in January and February, 1909, advised the commissioner that in so far as said opinions were inconsistent with the decision of the Comptroller of the Treasury of October 9, 1909, the department adopt and follow the latter.

On November 20, 1909, certain steamship lines, including the plaintiff, wrote to the commissioner of immigration at Ellis Island, reiterating their contention that the immigration act did not impose upon them the expense of treatment and mantaining aliens not

brought in in violation of law and that such expense was one of the expenses of enforcing the laws regulating the immigration of aliens. They also stated that their counsel had stipulated, pending further consideration of the subject by the steamship lines, he would advise them to pay without prejudice the hospital and maintenance bills of aliens arriving after October 26, 1909. The lines also stated that they stood ready to pay such charges for aliens arriving between October 26, 1909, and November 22, 1909.

On December 16, 1909, the commissioner wrote Mr. Beers that the Government could not and would not pay any immigrant hospital bills, nor incur any expenses arising out of treatment of immigrants whether they be deported or eventually admitted, and that no immigrant could be placed in the Ellis Island Hospital except on the distinct understanding that the steamship company concerned would pay all hospital bills rendered in connection with such immigrant.

On December 17, 1909, Mr. Beers wrote the commissioner as follows:

"DECEMBER 17, 1909.

"Hon. WILLIAM WILLIAMS,
"*Commissioner of Immigration,*
"*Ellis Island, New York Harbor.*

"Matter of hospital and maintenance charges.

"DEAR SIR: On conferring to-day with the subcommittee of the lines having this matter under consideration, I am informed that since the receipt by you of the letter from the lines, under date of November 20 last, it has been the custom of your inspectors not to accept arriving sick aliens for treatment unless on the special agreement of the line bringing them that the line would be responsible for the expenses. These cases will therefore be disposed of by these special agreements.

31 "That there may be no misunderstanding as to other and future cases, I would say that the lines adhere to the position stated in their letters to you, dated September 16 and November 20 last, to the effect that they are not responsible for the hospital and maintenance charges of aliens who, on arriving are found to be afflicted with apparently temporary sickness, which may require treatment, but which does not warrant deportation, and that, therefore, the lines can not admit liability for these expenses.

"As already explained to you, this decision of the lines was based on a conviction that the immigration act does not require the steamship companies to pay these expenses, but does make them a charge upon the immigrant fund, and further that the immigration act

expressly authorizes your bureau to relieve 'such aliens as may fall into distress or need public aid.'

"Very truly, yours,

LUCIUS H. BEERS."

On December 20, 1909, the commissioner notified the claimant, together with other steamship lines, as follows:

"DEPARTMENT OF COMMERCE AND LABOR,
"IMMIGRATION SERVICE, OFFICE OF THE COMMISSIONER,
"*Ellis Island, New York, N. Y., December 20, 1909.*

"*To the steamship companies bringing immigrants to New York:*

"You have notified this office that you will not hereafter be responsible for the hospital or maintenance charges of immigrants who on arriving are found to be afflicted with apparently temporary sickness, though such sickness require treatment and though the patients can not until cured be allowed to land under the immigration law. Such immigrants are on your hands, the Government must decline to incur any expense in connection with their care while sick and before landed and furthermore there are no funds available for such purposes.

"The Government insists that you are responsible for all such charges, but it can not continue to be put in the position of being compelled to sue for them. It therefore gives you notice that as soon as appropriate arrangements can be made to meet the new situation forced upon it, your immigrants will be subjected to a preliminary medical examination on board ship, in order that those who are physically or mentally unfit to land under the immigration law may be detained on the vessels which brought them and not become charges on the public funds.

"You must also be prepared to have sent back to the vessel promptly upon their discovery at Ellis Island, such other cases of sickness covered by your notice as may have escaped the attention of our medical officers at the preliminary examination on board ship. Some time must elapse before the new arrangements can be perfected and in the meantime it may be necessary for the Government to place in hospital a number of cases covered by the terms of your notice. In such instances you will be held responsible for all expenses in accordance with the practice of the past 20 years.

"Should emergency cases arise in which you may wish to have sick immigrants who have been left in your custody receive hospital treatment on shore, the immigration authorities will not stand
32 in the way, provided you signify your willingness to assume the expenses by signing one of the blank forms which have

been lodged for this purpose with the immigration and medical officers going on board your vessels.

WM. WILLIAMS, *Commissioner.*"

Counsel for plaintiff on December 20, 1909, under order of the plaintiff, wrote the commissioner as follows:

"DECEMBER 20, 1909.

"HON. WILLIAM WILLIAMS,
"*Commissioner of Immigration, Ellis Island.*

"DEAR SIR: Referring to the conference held at your office to-day with the commission of steamship lines in regard to your recent order that arriving aliens be examined on board ship, you will, no doubt, recall that you at first expressed some doubt as to the attitude of the lines toward their liability for hospital and maintenance charges for aliens brought to Ellis Island for examination. There need be no doubt on this subject. The lines admit, and have uniformly admitted, their liability for these charges for such reasonable period as is necessary to enable your officers to examine the aliens. This appears in the record of the original Toth case. And in the subsequent letters to you defining the attitude of the lines (viz, the letters of the lines of September 26 and November 20, 1909, and my letter of December 17, 1909), the lines referred back to their position as stated in the Toth case and reaffirmed that position.

"We have repeatedly mentioned this to you and have discussed with you what period should be considered reasonable for the examination, and, at one conference, suggested to you that it be the period while the vessel bringing the alien remained in port. But, within the bounds of a reasonable period, the lines admit, and always have admitted, their liability for these charges.

"Eliminating, however, these expenses before examination, we understood that you consider it necessary or proper to decline to examine arriving aliens at Ellis Island so as to avoid the possibility of expense to the Government for hospital treatment subsequent to the examination. The committee have accordingly considered the subject as affected by this position of your bureau and have decided that, until further notice, the lines will pay hospital and maintenance charges for detained aliens as heretofore, such payments to be made without prejudice to the claim of the lines that they are not liable for the hospital and maintenance charges of any alien not brought in violation of law except for such reasonable period as may be required for his examination.

"In making this reservation of the claim of the lines, the committee do not intend that payments made hereafter, until further notice, are to be made under protest, or that actions may be brought to recover such payments.

"The foregoing action of the committee was taken on behalf of the foreign passenger lines of the port, and I shall, therefore, ask the lines to write you confirming the action, but, in the meantime, I advise you of the committee's decision without delay.

"Yours, truly,

"(Sgd.) LUCIUS H. BEERS."

33 Acting upon the letter of their counsel dated December 20 above set forth, the steamship companies, including the claimant, thereupon wrote to the commissioner of immigration at Ellis Island, as follows:

"Hon. WILLIAM WILLIAMS,
"*Commissioner of Immigration, Ellis Island.*

Re hospital and maintenance charges.

"DEAR SIR: We, the undersigned, hereby adopt the statement of the committee as contained in the annexed letter addressed to you by Mr. Beers, counsel for the committee, under date of December 20, 1909. Until further notice, hospital and maintenance charges for arriving aliens will be paid by us as stated in that letter and on the terms there set forth.

"Yours, respectfully.

"LHB/JGM"

In the year 1910 there passed between the claimant and the commissioner of immigration correspondence in which the liability of the claimant for hospital charges was discussed and argued, the claimant continuing its contention that it was not liable for bills for treatment and maintenance of aliens ultimately admitted to the United States.

After the decision in the United States Circuit Court in the case of the United States v. Holland-America Line, on May 16, 1913, 205 Fed. Rep. 943, affirmed in 212 Fed. Rep. 116, Mr. Paddock, the counsel for the commissioner of immigration at Ellis Island, and Mr. Beers, the counsel for the steamship companies, conferred for the purpose of enabling an agreement to be reached as to the payment of expenses of detained aliens, pending an appeal by the United States in said action. They reached an agreement which was embodied in two letters dated June 3, 1913, sent to the commissioner of immigration at Ellis Island by various steamship lines, including the claimant.

Said letters are as follows:

"NEW YORK CITY, *June 3, 1913.*

"Hon. COMMISSIONER OF IMMIGRATION,
"*Ellis Island.*

"SIR: Pending an appeal taken by the United States from the decision of Judge Mayer, in the recent case of United States v. Holland-America Line, and until further notice, we agree, as follows, with respect to the payment of the maintenance charges and expenses of hospital treatment of the various classes of aliens to arrive on the vessels of our respective lines:

"1. We do not question our liability for the necessary hospital and maintenance expenses of aliens who are deported and we will, as heretofore, pay such expenses.

"2. With respect to arriving aliens who are sent to the hospital for treatment or observation and subsequently admitted (including what are known as accompanying aliens) we agree to pay to the United States the hospital and maintenance expenses of such aliens for the period during which they shall be detained in hospital, not exceeding in each case, however, five days after arrival at Ellis Island.

34 "3. If Judge Mayer's decision is reversed in whole or in part, we will pay such additional sums as we may be held liable for under the decision on appeal.

"4. We will, as heretofore, pay the maintenance changes (food bills) of aliens brought from our respective ships to Ellis Island for examination, such examination to be made as heretofore with all reasonable dispatch.

"(Signed by claimant and other steamship lines.)"

NEW YORK CITY, *June 3, 1913.*

"Hon. COMMISSIONER OF IMMIGRATION,
"*Ellis Island, New York.*

"SIR: In the latter part of the year 1909 the subject of the liability of the steamship companies for the maintenance and hospital expenses of detained aliens was under consideration by your department and the lines, and, at that time, certain agreements were made by us, or on our behalf, with respect to the payment of such expenses in the case of aliens to arrive. In the recent decision of Judge Mayer in the action pending in the United States District Court, brought by the United States against the Holland-America Line, the question of the liability of the lines for certain of these expenses has been passed upon, and we are accordingly writing you to-day agreeing with respect to the expenses which we are willing to pay, pending any appeal in that case and until further notice.

"Our letter of to-day on this subject is intended to supersede any previous agreements made in reference to the payment of the expenses to which we refer, and we would therefore respectively give notice that any agreements heretofore made on that subject by, or on our behalf, are revoked and superseded.

"(Signed by claimant and other steamship lines.)"

To the above-mentioned letters the commissioner replied to the attorney for the steamship lines as follows:

"DEPARTMENT OF LABOR,
"IMMIGRATION SERVICE, OFFICE OF COMMISSIONER OF IMMIGRATION,
"*Ellis Island, New York Harbor, N. Y., June 10, 1913.*

"LUCIUS H. BEERS, Esq.,
"*49 Wall Street, New York City.*

"SIR: Upon receiving your letter of June 6 I forwarded copies of the inclosures therein contained to the Bureau of Immigration, and in return have learned that they meet with its approval. Hereafter and until further notice hospital bills will be sent to the steamship companies in accordance with the terms of the inclosure dated June 3, beginning with the words 'Pending any appeal taken.' Hospital bills relating to the period prior to June 3, 1913, will be sent out in accordance with the terms of the paper of December 20, 1909, notice of revocation of which you have now sent this office under date of June 3, 1913.

"Respectfully,

"WM. WILLIAMS, *Commissioner.*"

IX.

By the act of October 22, 1913, it was provided that whenever aliens arriving are temporarily removed from a vessel in ac-
35 cordance with the provisions of section 16 of the immigration act of 1907, the steamship companies shall pay all expenses of removal and all expenses arising during subsequent detention pending decision of the eligibility of such aliens to enter the United States, including the expenses of maintenance and medical treatment in hospital or elsewhere.

X.

All the sums which the plaintiff sues in this cause to recover were paid for hospital charges on account of aliens who arrived at the port of New York prior to October 22, 1913.

XI.

At all times since July 1, 1907, there has been collected under the authority of the immigration law by officers of the United States a tax of not less than $4 for every alien entering the United States. The moneys so collected have in each year except 1915 and 1916 exceeded the amount required to meet all the expenses of regulating the immigration of aliens into the United States and have been, in addition, more than sufficient to meet all expenses of the character involved in this cause.

XII.

The Kingdom of the Netherlands, by its laws and statutes, accords to citizens of the United States the right to institute and to prosecute suits and claims against the Government of the Kingdom of the Netherlands, in the Kingdom of the Netherlands, for moneys due, and in such proceedings judgment may be recovered against the Kingdom of the Netherlands.

XIII.

The plaintiff herein has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the Government of the United States; no assignment or transfer of the claim herein made or any part thereof has been made at any time to any person or party, and no other person, persons, or corporation other than the plaintiff, is the owner of the claim herein sued for or in any way interested therein.

XIV.

The sums for which the plaintiff sues in this cause include the sums paid by it on account of aliens sent to hospitals for treatment or observation and subsequently admitted (including "accompanying" aliens) for the hospital expenses of such aliens for the entire period during which they were detained in hospitals, including the first five days after their arrival at Ellis Island.

Conclusion of Law.

Upon the foregoing findings of fact, the court decides as a conclusion of law that the plaintiff is entitled to recover of and from the United States the sum of sixteen thousand nine hundred and ninety-three dollars and fifty cents ($16,993.50).

HAY, *Judge*, delivered the opinion of the court:

This is a suit brought by the plaintiff to recover from the defendants for the actual cost and reasonable value of the maintenance and medical care and treatment furnished by the defendants to a number of aliens who had been brought by the plaintiff to the United States on its steamers. These aliens at the time of their arrival were found to be suffering with certain diseases. Because they were suffering with these diseases it was not practicable for the immigration officials to examine them at the time of their respective arrivals for the purpose of ascertaining whether or not they were entitled to land. The immigration officials decided that it was necessary to hold these aliens for such examination until they had recovered from the diseases with which they were suffering. Those suffering with contagious diseases were removed from the vessel under order of the medical officers of the immigration service to public hospitals in or near New York City under contract arrangement made by the officers of the United States whereby the hospitals charged the United States at agreed rates for the treatment, care, and maintenance of said aliens. When these aliens were discharged from these hospitals they were taken to Ellis Island, the immigrant station for the port of New York, for examination as to their right to land, and all of these aliens for whose treatment, care, and maintenance the defendants exacted the sum now in suit were admitted.

Other aliens afflicted with other than contagious diseases were, upon arrival, removed from the vessels to Ellis Island for examination, and upon being examined there by medical officers, they were found to be afflicted with diseases which necessitated treatment before they could be permitted to land, and they were placed in the Ellis Island Hospital for treatment. Upon being discharged therefrom they were examined by the immigration officer and were all admitted.

The aliens for whom these charges were incurred were brought by the defendants to the port of New York between May 27, 1908, and December 9, 1913.

It is claimed by the plaintiff that the defendants were not authorized by law to compel it to pay the sum in suit for the treatment, care and maintenance of aliens in hospitals where they were being treated prior to their landing and being admitted to the United States. They base this contention upon the ground that the statute contains no provision which either expressly or by implication imposes upon the plaintiff the obligation of paying for these hospital expenses in cases of aliens who are after examination admitted to the United States. The statute which controls this case is the act of Feb-

ruary 20, 1907; after a careful examination it is not perceived that there is any specific authority in that statute which would require the plaintiff to pay these charges, nor can it be implied from the language of the statute that Congress intended that these charges should be paid by the plaintiff.

Section 16 of the act of February 20, 1907, is as follows:

"That upon the receipt by the immigration officers at any port of arrival of the lists or manifests of incoming aliens provided for in sections twelve, thirteen, and fourteen of this act, it shall be
37 the duty of said officers to go or to send competent assistants to the vessel to which said lists or manifests refer, and there inspect all such aliens, or said immigration officers may order a temporary removal of such aliens for examination at a designated time and place, but such temporary removal shall not be considered a landing, nor shall it relieve the transportation lines, masters, agents, owners, or consignees of the vessel upon which said aliens are brought to any port of the United States from any of the obligations which, in case such aliens remain on board, would, under the provisions of this act, bind the said transportation lines, masters, agents, owners, or consignees: *Provided*, That where a suitable building is used for the detention and examination of aliens the immigration officials shall there take charge of such aliens, and the transportation companies, masters, agents, owners, and consignees of the vessels bringing such aliens shall be relieved of the responsibility for their detention thereafter until the return of such aliens to their care."

It will be seen from the reading of this section that the steamship companies are held liable for the detention and maintenance of aliens landed temporarily for examination at places where they remain in the companies' charge; but in the proviso to the section it is provided where the Government uses a suitable building for the detention and examination of aliens the immigration officials shall there take charge of such aliens and the companies shall be relieved of the responsibility for their detention thereafter until the return of such aliens to their care.

Judge Ward in the case of the United States v. Holland American Line, 212 Fed. Rep., 116, 119, says:

"The buildings on Ellis Island are just such suitable buildings, erected, indeed, by the means of the head money tax of $4 paid by the companies on each alien immigrant as required by the act. So also the State hospitals where immigrants having contagious diseases were at that time sent until they could be removed to Ellis Island for examination were suitable buildings, and the expense so incurred was defrayed by the Government out of the same source. We think the immigration officials, and not the defendant, were, in the language of the act, in charge of the immigrants in question at both places for all purposes."

Further, the language of the act is that where suitable buildings are used for "detention and examination" the immigration officials shall take charge of such aliens. The word "examination" is significant in this connection for the reason that the examination contemplated by the act could not take place until the aliens who were suffering with disease had been treated, cared for, and maintained, and it seems to the court that the act contemplated that the Government should pay charges which led up to the examination which was to take place before the alien could be admitted and with which the plaintiff had nothing to do, after the alien had been taken from its custody and placed in that of the defendants. It would seem that if Congress had intended to require from the plaintiff the payment of these charges it would have said so in plain terms, for the same act specified with great care and particularity what obligations and penalties the steamship companies are liable for. In sections
38 19 and 20 of the act these obligations and penalties are set out, and the omission from these obligations of these hospital charges is a pregnant circumstance going to show that it was not intended by Congress to impose them in that act; for by the act of October 22, 1913, this obligation was imposed upon the steamship companies. Such a law would not have been enacted if Congress had believed that it was already a law. It is, however, contended by the defendants that this act has been given a practical construction by the immigration authorities by the adoption of rules and regulations which impose upon the plaintiff the liability of paying the charges under consideration.

By section 22 of the act of 1907, the Commissioner General of Immigration is authorized to establish rules and regulations, not inconsistent with law. He can not make rules and regulations which are inconsistent with law, nor by such rules and regulations impose a liability which is not imposed by the act itself. If such a regulation imposing a liability is in the power of the officer it must have its source in the act under which the regulation is promulgated. Unless such power is conferred by the act the regulation becomes legislation by an administrative officer. It is a well-established principle that legislation can not be exercised under the guise of a regulation. This court has repeatedly passed upon the effect of regulations of the executive departments. It has uniformly held that such regulations could only have the force and effect of law when they are not in contravention to existing law. Illinois Central Railroad Company v. United States, 52 C. Cl., 53, and cases there cited.

As the act under consideration does not impose the obligation upon the plaintiff of paying these charges no rule or regulation could have that effect.

As to the claim of the defendants that the plaintiff bound itself by contract to pay these charges, it is only necessary to say that

from the evidence it appears that the plaintiffs were coerced into the making of that contract by a threat of the defendants which if carried into effect would have destroyed the plaintiff's business. In United States v. Holland American Limited, supra, the court said:

"It seems to us that the rule adopted by the immigration authorities was not consistent with law and was oppressive because it compelled the companies to pay in order to escape the alternative of having their steamers turned into hospitals and houses of detention. Such payments were not voluntary. They could not in the nature of things have been resisted."

For the foregoing reasons judgment will be entered in favor of the plaintiff for the sum of $16,993.50, and it is so ordered.

DOWNEY, Judge; BARNEY, Judge; BOOTH, Judge; and CAMPBELL, Chief Justice, concur.

39 V. JUDGMENT OF THE COURT.

At a Court of Claims held in the city of Washington on the third day of June, A. D. 1918, judgment was ordered to be entered as follows:

The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the Nederlandsch-Amerikaansche Stoomvaart Maatschappij (Holland-America Lijn) is entitled to recover and shall have and recover of and from the defendants, the United States, the sum of sixteen thousand nine hundred and ninety-three dollars and fifty cents ($16,993.50).

BY THE COURT.

VI. DEFENDANTS' APPLICATION FOR, AND ALLOWANCE OF, AN APPEAL.

From the judgment rendered in the above-entitled cause on the 3rd day of June, 1918, in favor of the claimant, the defendants, by their Attorney General, on the 15th day of August, 1918, make application for, and give notice of, an appeal to the Supreme Court of the United States.

HUSTON THOMPSON,
Assistant Attorney General.

Filed August 15, 1918.

Ordered: That the above appeal be allowed as prayed for.

EDWARD K. CAMPBELL,
Chief Justice.

AUGUST 24, 1918.

Court of Claims.

NEDERLANDSCH-AMERIKAANSCHE STOOMVAART MAATSCHAPPIJ (Holland-America Lijn)

vs.

THE UNITED STATES.

No. 32831.

I, Saml. A. Putman, chief clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the findings of fact and conclusion of law and opinion of the court by Hay, J., entered June 3, 1918; of the judgment of the court; of the application of the defendants for, and the allowance of, an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington City this 26th day of August, A. D. 1918.

[SEAL.]

SAML. A. PUTMAN,
Chief Clerk Court of Claims.

(Endorsed on cover:) File No. 26728. Court of Claims. Term No. 642. The United States, appellant, vs. Nederlandsch-Amerikaansche Stoomvaart Maatschappij (Holland-America Lijn). Filed August 28th, 1918. File No. 26728.

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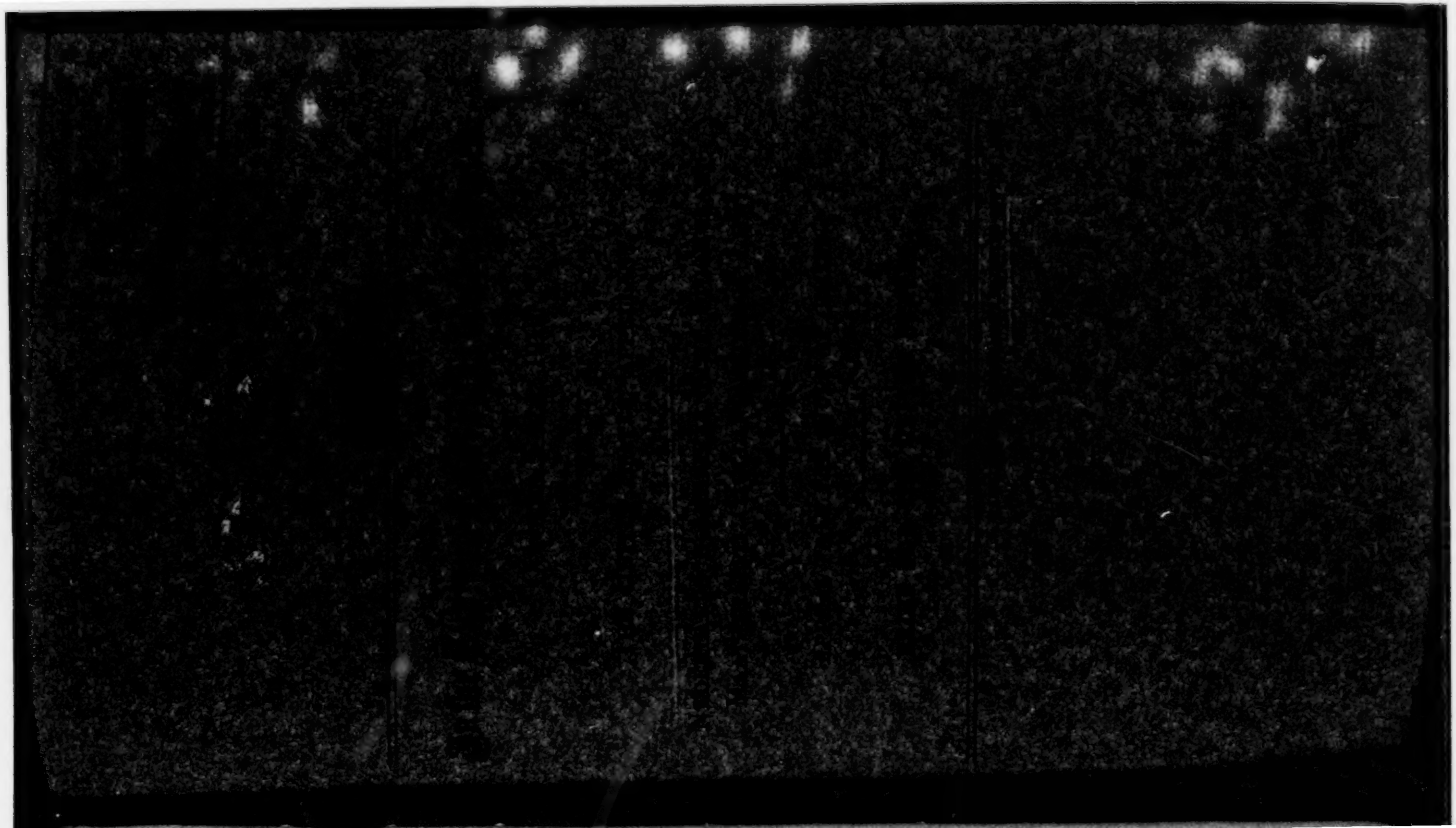

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In the Supreme Court of the United States.

OCTOBER TERM, 1919.

THE UNITED STATES, APPELLANT,
v.
NEDERLANDSCH-AMERIKAANSCHE STOOMVAART MAATSCHAPPIJ (HOLLAND-AMERICA LIJN). } No. 200.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This is an appeal by the Government from a judgment of the Court of Claims in favor of appellee for the sum of $16,993.50 paid by appellee to the United States Commissioner of Immigration between May 27, 1908, and December 9, 1913. The payments were made to recompense the Government for the exact cost to it of the maintenance and medical treatment of aliens brought to New York by appellee during the period of detention of such aliens prior to admission to the United States. (Finding IV, R. 9).

The statute under which this expense was charged and collected reads (Sec. 16 of the act of February 20, 1907, 34 Stat. 898):

> That upon the receipt by the immigration officers at any port of arrival of the lists or manifests of incoming aliens provided for in sections twelve, thirteen, and fourteen of this

> act, it shall be the duty of said officers to go or to send competent assistants to the vessel to which said lists or manifests refer, and there inspect all such aliens, or said immigration officers may order a temporary removal of such aliens for examination at a designated time and place, but such temporary removal shall not be considered a landing, nor shall it relieve the transportation lines, masters, agents, owners, or consignees of the vessel upon which said aliens are brought to any port of the United States from any of the obligations which, in case such aliens remain on board, would, under the provisions of this act, bind the said transportation lines, masters, agents, owners, or consignees: *Provided*, That where a suitable building is used for the detention and examination of aliens the immigration officials shall there take charge of such aliens, and the transportation companies, masters, agents, owners, and consignees of the vessels bringing such aliens shall be relieved of the responsibility for their detention thereafter until the return of such aliens to their care.

This is a substantial reenactment of section 16 of the former act of March 3, 1903 (32 Stat. 1213–17). Under this statute as well as under previous statutes on the same subject, departmental regulations required the expenses incurred in the examination and detention of aliens to be paid by the steamship companies; and the regulation under the statute of 1907 required examination and detention on board ship if the payment of such expenses was refused. (Rule 13, R. 22–23.)

The practice as to examining and detaining aliens is fully set forth in Findings II to VII, inclusive (R. pp. 8–11), and has been in effect at least since 1891.

During the period covered by this case the Government maintained at Ellis Island suitable buildings used by it for the detention and examination of alien immigrants.

In July, 1894 (Finding VIII, R. 11), appellee, together with other steamship companies, disclaimed liability for the expense of maintenance on Ellis Island of any aliens except those afterwards deported. The Commissioner of Immigration at Ellis Island, acting under instructions from the Superintendent of Immigration at Washington, inspected all aliens on board the next incoming steamship belonging to appellee. Upon inquiry being made as to the reason for this, the Commissioner of Immigration notified appellee of his understanding that the appellee, and other like companies, refused to continue paying for the maintenance of immigrants detained for examination, but that if satisfactorily notified by appellee that it agreed to pay such maintenance charges it would be permitted to send such aliens to Ellis Island as formerly. In response to this notice the appellee sent to the United States Commissioner of Immigration the following letter (R. 12):

NEW YORK, *July 25, 1894.*

DR. J. H. SENNER,
U. S. Commissioner of Immigration,
Ellis Island, N. Y. Harbor.

DEAR SIR: In reply to your yesterday's favor I now beg to inform you that the

Netherlands-American Steam Navigation Company will, until the matter is decided differently by proper authority, continue to pay the cost of maintenance pending examination at Ellis Island of all immigrants brought by their steamships to the port of New York, and that we are ready to give bond to that effect.

Please inform me, if this meets with your requirements, so as to secure the examination of immigrants arriving by our steamers at Ellis Island, as heretofore.

To which the commissioner replied (R. 12):

OFFICE OF THE
U. S. COMMISSIONER OF IMMIGRATION,
Ellis Island, New York Harbor, July 26, 1894.

NETHERLANDS-AMERICAN STEAM NAVIGATION COMPANY,
39 Broadway, New York.

GENTLEMEN: Replying to your letter of the 25th instant, in further reference to the payment of maintenance bills of immigrants detained at this station for examination, I beg to say that the statement made by you therein is satisfactory and that passengers arriving by vessels of your line will be examined at Ellis Island instead of upon shipboard.

Respectfully, yours,
(Signed) DR. J. H. SENNER,
Commissioner.

In 1893 the Superintendent of Immigration, with the approval of the Secretary of the Treasury, adopted rules requiring such expenses to be borne by the steamship companies as formerly. New rules

were issued from time to time, but no substantial change made in this requirement (R. pp. 12–24).

In October, 1907, a claim by the Government for expenses incurred incident to the detention of a certain family of aliens known as the Goth family, was resisted by the Cunard Steamship Company; the Commissioner of Immigration at Ellis Island ruled that the steamship company should pay the bill. The company appealed to the Secretary of Commerce and Labor, and it is stated in a letter from the Solicitor of the Department of Commerce and Labor to the attorney of appellee, dated March 3, 1909 (R. 25), that the Secretary of Commerce and Labor had approved the views expressed in a memorandum of the solicitor that the steamship company was not liable for this expense. The record discloses no ruling by the Secretary of Commerce and Labor; there is nothing to show that the views of the solicitor were adopted by the department and they were not followed. Thereafter the steamship companies, including appellee, declined to pay such expenses, and on September 16, 1909 (R. 26–27), in a letter to the Commissioner of Immigration, stated:

> Under these circumstances, we feel obliged to notify you that we can not be responsible for such expenses, except for a period long enough to enable the examining medical officer to determine definitely the nature of the alien's affliction.

The matter was referred to the Secretary of Commerce and Labor, who, in October, 1909 (R. 27),

informed counsel for appellee that unless the steamship companies would agree to pay the bills for hospital treatment, the aliens suffering from "nondeportable" diseases would be detained on ship. After some further correspondence (R. 27–29) the Commissioner of Immigration on December 16, 1909 (R. 30), advised the counsel for appellee that the Government "could not and would not pay any immigrant hospital bills, nor incur any expenses arising out of treatment of immigrants, whether they be deported or eventually admitted, and that no immigrant could be placed in the Ellis Island Hospital except on the distinct understanding that the steamship company concerned would pay all hospital bills rendered in connection with such immigrant." (The Comptroller of the Treasury had previously ruled (R. 27) that these expenses could not be charged against the appropriation for the expense of regulating immigration.) The steamship companies still disclaiming liability, the commissioner on December 20, 1909, notified appellee as well as other like steamship companies as follows (R. 31–32):

> DEPARTMENT OF COMMERCE AND LABOR,
> IMMIGRATION SERVICE, OFFICE OF THE COMMISSIONER,
> *Ellis Island, New York, N. Y.,*
> *December 20, 1909.*
>
> *To the steamship companies bringing immigrants to New York:*
>
> You have notified this office that you will not hereafter be responsible for the hospital or

maintenance charges of immigrants who on arriving are found to be afflicted with apparently temporary sickness, though such sickness require treatment and though the patients can not until cured be allowed to land under the immigration law. Such immigrants are on your hands, the Government must decline to incur any expense in connection with their care while sick and before landed and furthermore there are no funds available for such purposes.

The Government insists that you are responsible for all such charges, but it can not continue to be put in the position of being compelled to sue for them. It therefore gives you notice that as soon as appropriate arrangements can be made to meet the new situation forced upon it, your immigrants will be subjected to a preliminary medical examination on board ship, in order that those who are physically or mentally unfit to land under the immigration law may be detained on the vessels which brought them and not become charges on the public funds.

You must also be prepared to have sent back to the vessel promptly upon their discovery at Ellis Island, such other cases of sickness covered by your notice as may have escaped the attention of our medical officers at the preliminary examination on board ship. Some time must elapse before the new arrangements can be perfected and in the meantime it may be necessary for the Government to place in hospital a number of cases covered by the terms of your notice. In such in-

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stances you will be held responsible for all expenses in accordance with the practice of the past 20 years.

Should emergency cases arise in which you may wish to have sick immigrants who have been left in your custody receive hospital treatment on shore, the immigration authorities will not stand in the way, provided you signify your willingness to assume the expenses by signing one of the blank forms which have been lodged for this purpose with the immigration and medical officers going on board your vessels.

WM. WILLIAMS,
Commissioner.

On the same day, December 20, 1909, counsel for appellee wrote the Commissioner of Immigration (R. 32) as follows:

DECEMBER 20, 1909.

Hon. WILLIAM WILLIAMS,
Commissioner of Immigration, Ellis Island.

DEAR SIR: Referring to the conference held at your office to-day with the commission of steamship lines in regard to your recent order that arriving aliens be examined on board ship, you will, no doubt, recall that you at first expressed some doubt as to the attitude of the lines toward their liability for hospital and maintenance charges for aliens brought to Ellis Island for examination. There need be no doubt on this subject. The lines admit, and have uniformly admitted, their liability for these charges for such reasonable period as is necessary to enable your officers to examine the aliens. This appears in the record of the

original Toth case. And in the subsequent letters to you defining the attitude of the lines (viz, the letters of the lines of September 26 and November 20, 1909, and my letter of December 17, 1909), the lines referred back to their position as stated in the Toth case and reaffirmed that position.

We have repeatedly mentioned this to you and have discussed with you what period should be considered reasonable for the examination, and at one conference suggested to you that it be the period while the vessel bringing the alien remained in port. But, within the bounds of a reasonable period, the lines admit, and always have admitted, their liability for these charges.

Eliminating, however, these expenses before examination, we understood that you consider it necessary or proper to decline to examine arriving aliens at Ellis Island so as to avoid the possibility of expense to the Government for hospital treatment subsequent to the examination. The committee have accordingly considered the subject as affected by this position of your bureau and have decided that, until further notice, the lines will pay hospital and maintenance charges for detained aliens as heretofore, such payments to be made without prejudice to the claim of the lines that they are not liable for the hospital and maintenance charges of any alien not brought in violation of law except for such reasonable period as may be required for his examination.

In making this reservation of the claim of the lines the committee do not intend that payments made hereafter, until further notice, are to be made under protest, or that actions may be brought to recover such payments.

The foregoing action of the committee was taken on behalf of the foreign passenger lines of the port, and I shall, therefore, ask the lines to write you confirming the action; but, in the meantime, I advise you of the committee's decision without delay.

Yours, truly,

(Signed) LUCIUS H. BEERS.

This letter and agreement were approved by appellee and other companies by a letter addressed to the Commissioner of Immigration (R. 33):

Hon. WILLIAM WILLIAMS,
Commissioner of Immigration,
Ellis Island.

(Re hospital and maintenance charges.)

DEAR SIR: We, the undersigned, hereby adopt the statement of the committee as contained in the annexed letter addressed to you by Mr. Beers, counsel for the committee, under date of December 20, 1909. Until further notice, hospital and maintenance charges for arriving aliens will be paid by us as stated in that letter and on the terms there set forth.

Yours, respectfully,

_____ _____.

LHB/JGM.

Under the contract thus made, which is, in effect, a continuation of the contract made in July, 1894 (ante this brief, pp. 3 and 4, Rec. 12), the appellee, as well

as other steamship companies, continued to pay these expenses until June 3, 1913, when another agreement was entered into (R. 23 and 24) under which the balance of the expenses which are now sought to be recovered were made. The reason for this last agreement is that some time prior to 1913 the United States brought suit against the appellee upon a claim for expenses incurred in the detention of certain immigrants. This case was decided in favor of appellee on May 16, 1913 (205 Fed. 943), and on appeal affirmed February 10, 1914 (212 Fed. 116), and the last agreement was to cover the payment of such expenses during the appeal of this case. The case finally reached this court and was affirmed by a divided court, without opinion, on November 2, 1914 (235 U. S., 686). After the decision by the Circuit Court of Appeals the claimant instituted this suit to recover all payments made by it during the six years preceding the filing of its petition. The claim is to recover payments alleged to have been unlawfully exacted under duress and is not founded upon the Constitution or any law of Congress. The opinion of the Court of Claims shows that in its view the payments were exacted without authority of law under a contract which the appellee by duress was compelled to make, though there is no finding of fact as to whether the payments were made voluntarily or under duress.

SPECIFICATION OF ERRORS RELIED ON.

I. The petition of appellee asserts a claim over which the Court of Claims had no jurisdiction.

II. The findings of fact show either a voluntary payment or payment under duress and therefore preclude a judgment by the Court of Claims.

III. The immigration act of 1907 made the appellee responsible for the payments which it seeks to collect.

ARGUMENT.

I.

The petition asserts a claim over which the Court of Claims had no jurisdiction.

The petition (R. 1–5) after alleging the regulation of the Commissioner of Immigration under which the expenses referred to in the statement were charged to appellee, alleges a threat by that official that if such expenses were not paid by appellee that "thereafter all aliens brought by the vessels of the petitioner would be held on board ship until their application for admission to the United States should be finally adjudicated," that this threat was actually carried out in one instance, and that if enforced it would have occasioned great inconvenience and financial loss to the petitioner and other like steamship companies, and would have caused "a complete disruption of oceanic commerce in the port of New York and the United States." It is then alleged—

> *Consequently, the petitioner paid, under duress and involuntarily, the bills when rendered.*
>
> * * *
>
> *The exaction of such payments from the petitioner and the making of such threats were*

> *entirely without warrant of law.* * * * Petitioner is advised by counsel that under the laws and statutes of the United States as interpreted in said case of the United States of America against Holland-American line, the exaction from petitioner of the above-mentioned hospital charges under duress was *in violation of the rights and privileges* secured to the petitioner as a subject of the Kingdom of the Netherlands under the Constitution of the United States, the treaties between the United States and the Kingdom of the Netherlands and the laws of the United States. * * * *The amounts thus unlawfully exacted from the petitioner and paid by it under duress* * * * were remitted monthly to the Commissioner of Immigration at the port of New York as required by him. * * * (Italics ours.)

The claim thus asserted is not one of which the Court of Claims has jurisdiction. A violation of plaintiff's rights is alleged, consisting of the exaction of money from its unlawfully and by duress by an officer of the United States. This is not a claim founded upon the Constitution of the United States. It is not founded upon any law of Congress or regulation of an executive department, as it is expressly alleged that the regulation and the exaction of payment under it were unlawful. (*Basso* v. *United States*, 239 U. S., 602.) It is a claim sounding in tort, the very gist of its assertion is the denial of any meeting of the minds, of any obligation arising

by way of contract, express or implied. It is a claim for money due, on the ground that the money was unlawfully exacted from claimant by an officer of the United States and parted with by claimant under duress. The Court of Claims has no jurisdiction to entertain such claim and the petition should have been dismissed.

Gibbons v. *United States*, 8 Wall. 269.
Morgan v. *United States*, 14 Wall. 531, 535.
Langford v. *United States*, 101 U. S. 341, 343.
Schillinger v. *United States*, 155 U. S. 163, 169.
Russell v. *United States*, 182 U. S. 516, 530, 535.
Harley v. *United States*, 198 U. S. 229, 234.
Juragua Iron Co. v. *United States*, 212 U. S. 297, 309, 310.
Crozier v. *Krupp*, 224 U. S. 290, 303, 304.
Peabody v. *United States*, 231 U. S. 530, 539.
United States v. *Buffalo Pitts Co.*, 234 U. S. 228, 232.
Basso v. *United States*, 239 U. S. 602.
Tempel v. *United States*, 248 U. S. 121.
Ball Engineering Co. v. *White & Co.*, 250 U. S. 46.

II.

The findings of fact show either a voluntary payment or payment under duress and therefore preclude a judgment by the Court of Claims.

While the petition of claimant is based on the theory that the payments were exacted under duress, it appears from the findings of fact that what the Government officials threatened to do unless the

appellee paid the expenses as formerly, was an act expressly authorized by section 16 of the act of 1907, namely, "To go or to send competent assistants to the vessel * * * and there inspect all such aliens, or said emigration officers may order a temporary removal of such aliens for examination at a designated time and place." The Court of Claims finds (Finding VI, R. 10) that if the aliens "had been examined on board ship or detained there pending their recovery to health without being removed from said vessels serious inconvenience and financial loss to the plaintiff and the public would have resulted." That is, appellee's ships would have been detained in port for considerable periods and the number of trips such ships could make in the business of transporting aliens to this country would have been greatly diminished. The law authorizing the removal to Ellis Island was distinctly to the advantage of appellee and other like steamship companies. They were performing no service for the United States but were transporting aliens to this country as a business, and doing so not even at the invitation of the United States. The examination and detention of aliens was necessary to protect this country so far as possible from the consequences of the business in which the appellee was engaged and was also necessary from humanitarian reasons. The expense had to be incurred and paid; it could not be paid by the aliens; there was no authority for the United States to pay it (Decision of Comptroller of the Treasury, R. p. 27), and therefore it

was properly chargeable to the companies who were primarily responsible for it and for whose distinct advantage the provision for examination and detention at Ellis Island instead of on board ship was made. It does not appear that the steamships were required to have the examination and detention made at Ellis Island; but, on the contrary, this was so greatly to their advantage that they insisted that it be done. The most that can be made out of the attitude of the Government is that the officials took the position that if the steamships desired examination and detention at Ellis Island instead of on board ship, then they must pay the actual expenses incident to the same. In fact, there is no element of duress in the matter. Irrespective of the contracts under which these payments were made, the payments can not be said to have been made under duress which would warrant recovery even if any statute existed by which the claim could be asserted, and are therefore voluntary payments, made without protest and with full knowledge of fact and law.

Cheseborough v. *United States*, 192 U. S. 253;
United States v. *New York and Cuba Mail Steamship Company*, 200 U. S. 488.

The payments, however, were all made under contracts under which the Government forebore from exercising its right to examine and detain on shipboard, and the appellee obtained the benefit of landing aliens at Ellis Island and agreed to pay the expenses as formerly. The first contract was made in 1894 (R. 12), the second, under which practically

all payments now claimed were made, was entered into December 20, 1909. As to this the Court of Claims states in its opinion (R. 39):

> As to the claim of the defendants that the plaintiff bound itself by contract to pay these charges, it is only necessary to say that from the evidence it appears that the plaintiffs were coerced into the making of that contract by a threat of the defendants which, if carried into effect, would have destroyed the plaintiff's business.

Thus it appears that, though the payments were made under contract, the Court of Claims finds that there was such duress that appellee was relieved from the contractual obligations; that therefore there was no contract, and the payments not being in any way authorized by law, were wrongfully and illegally exacted from appellee. If this view be correct, and it is the view upon which the Court of Claims rendered judgment, that judgment is clearly erroneous, for the exaction of the payments on behalf of the Government was tortious. There was no feature or element of contract in it. The Court of Claims has no jurisdiction to enter judgment against the Government on an action sounding in tort. The case of *Gibbons* v. *United States* (8 Wall. 269) is strictly in point. It is there stated (p. 273):

> If such pressure was brought to bear on him as would make the renewal of the contract void, as being obtained by duress, then there was no contract, and the proceeding was a tort

> for which the officer may have been personally liable. If the plaintiff's consent was voluntary, then the contract to which he assented was binding, and must control the case.

In the same case it is stated (p. 274, 275):

> But it is not to be disguised that this case is an attempt, under the assumption of an implied contract, to make the Government responsible for the unauthorized acts of its officer, those acts being in themselves torts. No government has ever held itself liable to individuals for the misfeasance, laches, or unauthorized exercise of power by its officers and agents.
>
> * * * * *
>
> The language of the statutes which confer jurisdiction upon the Court of Claims, excludes by the strongest implication demands against the Government founded on torts. The general principle which we have already stated as applicable to all governments, forbids, on a policy imposed by necessity, that they should hold themselves liable for unauthorized wrongs inflicted by their officers on the citizen, though occurring while engaged in the discharge of official duties.

The claim of appellee is not founded on the Constitution of the United States or upon any law of Congress or regulation of an executive department, and therefore, if the facts warranted the holding by the Court of Claims, it is a case sounding in tort and that court was without jurisdiction. *Gibbons* v. *United States* (supra) and other cases cited at page 14.

The Government takes the position, however, that the payments were made not only under a statute by which they were authorized, but also under definite contracts, made by appellee because it was distinctly to its benefit so to do. That these contracts were entered into with full knowledge of all the facts and of the law, without any protest or reservation on its part in the first contract, and with a positive disclaimer of protest and of intention to sue in the second. In the first contract (R. 12) the appellee agreed, without reservation or protest, that it would, "until the matter is decided differently by proper authority, continue to pay the cost of maintenance." * * *

The payments covered by this contract were from May 14, 1908, to December 20, 1909. On December 20, 1909, the second contract was made (R. 32, 33). By this contract appellee agreed to pay the charges as formerly, stating:

> Such payments to be made without prejudice to the claim of the lines that they are not liable for the hospital and maintenance charges of any alien not brought in violation of law except for such reasonable period as may be required for his examination.
>
> *In making this reservation of the claim of the lines, the committee do not intend that payments made hereafter, until further notice, are to be made under protest, or that actions may be brought to recover such payments.* (Italics ours.)

This language is plain; appellee did not want its agreement to pay to be construed as an admission of its liability, but, so far as the record shows, without any compulsion of any kind it voluntarily stipulated that its reservation of its right to reassert its claims was not intended to attach a protest to its payments or to give notice that it would bring action to recover such payments. In the absence of some showing of coercion requiring that it be made, this statement in the agreement stamps these payments as voluntary.

The only reference to the contract in the opinion of the Court of Claims is that heretofore quoted to the effect that it was no contract because appellee was coerced. It is not clear whether this reference is to the first contract or the second, probably to the first, as no attention whatever is paid by the court to the clear promise of appellee which we have last quoted to pay these expenses without protest and with no intention to sue for recovery. There is absolutely no showing in the record that it was required to make payments without protest, or to make any statement as to its intention to sue for recovery; therefore, by its own written declaration its payments are stamped as voluntary and could not be recovered even if a statute existed authorizing suit to recover such payments improperly exacted.

III.

The immigration act of 1907 made the appellee responsible for the payments which it seeks to collect.

The detention and examination of aliens at Ellis Island was greatly to the advantage of appellee, the United States was under no obligation to detain or examine them there, and at all times had the right to examine and detain such aliens on shipboard. The expense charged was an absolutely necessary expense; it was incurred on account of the business in which appellee was for profit engaged. Appellee brought aliens to this country not by invitation or request of the United States but for the profit it could gain from so doing. The expense of examination and detention was necessarily incident to the enforcement of the statute, and that statute, viewed in the light of all the surrounding circumstances, undoubtedly authorized the regulation imposing the payment of such expenses on the steamship companies, if it did not do so by its express terms.

We here adopt and restate, the argument made by former Assistant Attorney General William Wallace, jr., on this proposition in his brief in the case of *United States* v. *Holland-American Lines*, No. 409, October term, 1914, affirmed by an equally divided court, without opinion (235 U. S. 686).

Interpretation is demanded of section 16 of the immigration act of February 20, 1907 (34 Stat. 898), reading—

"SEC. 16. That upon the receipt by the immigration officers at any port of arrival of the lists or manifests of incoming aliens provided for in sections twelve, thirteen, and fourteen of this act, it shall be the duty of *said officers* to *go* or to *send* competent assistants *to the vessel* to which said lists or manifests refer, *and there inspect all such aliens, or said* immigration *officers may order a temporary removal* of such aliens *for examination at a designated time and place*, but *such temporary removal shall not be considered a landing*, nor shall *it relieve the transportation lines*, masters, agents, owners, or consignees *of the vessel* upon which said aliens are brought to any port of the United States *from any of the obligations which, in case such aliens remain on board, would, under the provisions of this act, bind the said transportation lines*, masters, agents, owners, or consignees: *Provided*, That where a suitable building is *used* for the detention and examination of aliens the immigration officials shall there take charge of such aliens, and the transportation companies, masters, agents, owners, and consignees of the vessels bringing such aliens shall be relieved of the responsibility for their *detention* thereafter until the return of such aliens to their care."

This section 16 was first enacted in the act of March 3, 1903 (32 Stat. 1213–7), section 16 of the latter act being word for word as above quoted, save that the word "incoming" in the second line was lacking.

The House Committee on Immigration and Naturalization, in its report on the bill in 1903 (H. Rept. 982, 57th Cong., 1st sess.), explained the purpose of this section 16 as follows:

"Section 16 repeats the provisions of section 8 of the act of March 3, 1891, as to making examinations of aliens either on board vessel or at such place and time as may be designated, with the proviso that such removal for examination shall not affect the obligations imposed by law upon the vessels, *and aliens, who shall be deemed constructively on board ship until lawfully landed.* It includes a proviso, however, exonerating the masters, etc., of vessels from *responsibility* for the *safe-keeping* of aliens brought by them, respectively, during the time such aliens are held in suitable buildings for investigation of their right to admission by the immigration officers at the port of arrival."

DEPARTMENTAL PRACTICE.

Controversy arose while the act of 1882 was in force; and regulations had been issued for temporary removal, which should not be deemed a landing. (R. 69.) On January 3, 1891, the superintendent asked the Secretary to direct him. On January 17 the latter answered: "The department has uniformly

held that the steamship companies are liable, etc." (R. 71), and directed a continuance of that practice. On February 6, 1891, the Acting Secretary advised the superintendent (R. 75): "Whatever arrangement is agreed upon must be made under the understanding, *heretofore frequently expressed* by the department and *sustained by the courts*, that the temporary removal of the immigrants from on shipboard to a convenient place for examination, *being allowed for the convenience of the importing vessels*, must be made without expense to the Government for the care and support of the detained immigrants until they are discharged.

Soon after the passage of the act of 1891, the North German Lloyd, through counsel, because of section 8 thereof, refused to further pay. On April 28, 1891, the Secretary ordered the superintendent to examine on board, unless the owners would bear these charges; and the latter continued to pay them (R. 77–78). On August 25, 1891, the department said (R. 81):

"This is the *established rule*. The rule is founded in justice. The steamship company should be compelled to pay the detention expenses of immigrants they bring here, whose legal right to land is so uncertain that it takes time and trouble, on the part of the department, to define their status."

In June, 1894, a change of the practice was urged by the owners; but the department said the practice was settled and could not be

reconsidered (R. 85, 49–50). In July, 1894, various owners refused to pay save on *deported* aliens (R. 167); whereupon examination on board was ordered. Defendant's predecessor asked the reason and was told. Whereupon it wrote (R. 176):

"I now beg to inform you that the Netherland's, etc., Co. (the predecessor) *will, until the matter is decided differently by proper authority, continue to pay the cost of maintenance, pending examination at Ellis Island of all immigrants, etc.*"

Other companies in 1898 and 1908–9, continued to agitate the matter. On October 24, 1894, Secretary Carlisle submitted the question to the Attorney General, setting forth the statutes, the uniform practice, the reasons therefor, and the contention of the shipowners. (R. 101–110.) No opinion was given—doubtless because of his previous advice that a like question could be decided only by the courts. (21 Op. 7, 8.)

In July, 1908, the Cunard Line renewed the controversy in the "Toth" case. (R. 80–200.) This culminated in a letter of March 3, 1909, from the solicitor of the department to the attorney of the line, stating that the Secretary approved his (the solicitor's) view—which was that, *if the existing practice were continued*, a procedure *should be* adopted charging the owner to the date when all essential facts bearing on the right to admission were first ascertained—the after expense to be borne by

the Government. His suggestion was never adopted. But on September 16, 1909, because of that letter, defendant and other owners sent a joint letter to the commissioner saying they would not be "responsible for such expenses, except for a period long enough to enable the examining medical officer to determine definitely the nature of the alien's affliction."

Then followed the refusal to pay these bills and this suit.

SPECIFICATIONS OF ERROR RELIED ON.

The assignments of error (R. 232–234) in many ways present the following questions:

1. Does the immigration act of 1907 impose these charges on the defendant?

2. Does it leave the matter as a subject for administrative regulation?

3. Had the defendant, by valid contract, assumed their payment?

ARGUMENT.

I.

The immigration act places responsibility for the care of alien immigrants upon the transportation companies until the aliens have actually been granted the right to enter—and such care necessarily includes hospital treatment.

The historic development of our immigration laws (which, contrary to the assumption of both the lower courts, are essentially restrictive, and not intended to encourage the

incoming of aliens) reasonably demonstrates that Congress never intended that public moneys should be used for the care of aliens between their arrival at our ports and their actual admission after examination by the immigration officers.

In *Hamilton* v. *Rathbone*, 175 U. S. 414, 420, this court said:

" * * * if there were an ambiguity in a section of the Revised Statutes resort might be had to the original act from which the section was taken, to ascertain what if any change of phraseology there is, and whether such change should be construed as changing the law." (See also *Texas Pac. Ry.* v. *I. C. C.* 162 U. S. 197, 218.)

The Federal Government first assumed to regulate immigration, *through its own officers*, by act of March 3, 1875. (18 Stat. 477.) Section 5 of the act provided for the exclusion of certain aliens, for the inspection of every arriving vessel to discover whether obnoxious aliens were on board; that *no* alien *should leave the vessel until the inspection had ended;* and until final decision, the vessel bringing the alien could *not leave port* save by giving bond.

The next act was that of August 3, 1882, section 1 of which levied a "head tax" of 50 cents on each alien brought in. This constituted an "immigrant fund," usable, among other uses, for "the care of immigrants *arriving*" etc., and for "the relief of such as are in distress." These words were carefully restricted to aliens *lawfully landed* (for whom, of course, the companies were no longer responsible), as

is forcibly shown by the language of section 2, which provided that the Secretary should have power to enter into contracts for the support and relief of such immigrants "*landing*" as "may fall into distress or need public aid." Section 4 required the owners to bear the return cost of aliens not permitted to land. Thus no obligation for their care was assumed by the Government until a favorable decision of their right to enter.

Neither of these acts provided for examination elsewhere than on board ship. And yet during their existence, such removal had been authorized by regulation and practice, with constant collection from shipowners of such *ad interim* charges.

The next act of March 3, 1891 (26 Stat. 1084), was the first comprehensive regulation of the subject, and forms the foundation of all after legislation. Section 1 classifies the aliens denied entry. Section 4, under penalty, prohibits shipowners from soliciting "the immigration of any alien * * * except by ordinary * * * advertisements, etc., stating the sailings * * * and terms * * * of transportation." (This provision is carried into all later acts revealing a purpose to restrict the incoming of aliens. This attitude of Congress necessarily precludes any subtle construction lodging on the Government a liability not clearly imposed.)

Section 8 provided that officers should board vessels and—

"there inspect all * * * aliens, *or* the inspection officers may order a temporary re-

moval of such aliens for examination at a designated time and place, and then and there detain them until a thorough inspection is made—"

expressly providing, however, that "such removal shall not be considered a landing during the pendency of such examination."

Later it declared that "during such inspection, after temporary removal, the superintendent shall *cause* such aliens to be properly housed, fed and cared for." But there was no *express* provision as to who should bear the resulting charges.

Immediately after the passage of this act the shipowners strenuously contended that the above provision relieved them of these charges. The department refused to change the practice, holding that though the act might be read to *conditionally* charge the Government, *in case* a removal were ordered, it was discretionary to either remove or examine on ship, and that it would examine on ship, unless the owners preferred to pay these charges for the sake of off-board examination. (R. 77–78.)

Section 10 provided that—

"all aliens who may unlawfully come * * * shall, if practicable, be immediately sent back on the vessel by which they were brought in" and "that the cost of their maintenance while on land, as well as the expense of the return of such aliens, shall be borne by the owners of the vessel," etc. (This provision was preserved in the later acts also.)

The contention of the shipowners was renewed in 1894 and 1898; and much correspondence ensued. But the practice remained unchanged, and the regulations were from time to time reissued. All this was known to Congress when it passed the general immigration act of March 3, 1903, wherein was first enacted the present section 16. With a manifest purpose to settle the dispute, Congress *omitted* from the new section all language in old section 8, on which the shipowners had relied; and *preserved* the discretionary power to examine on or off ship, and the provision that removal shall not be considered a landing, on which the Government had relied; and in addition declared that as to every obligation of the owner (save the duty to detain) the case should stand as if the alien were still no board. (We have already quoted the report of the House committee, explaining the purpose of the language used.) Thus explained, the provision appears to be a legislative adoption of the practice obtaining. Thereafter and until the passage of the act of 1907, the department collected, and the owners, *without protest*, paid these charges. Congress reenacted section 16 in the act of 1907, and thereby, according to settled principles, adopted the practical construction *given its language*, during the four preceding years, by the department.

In *United States* v. *Hermanos y Compania*, 209 U. S. 337, 339, this court said—

And we have decided that the reenactment by Congress, without change, of a statute which had previously received long con-

tinued executive construction is an adoption by Congress of such construction. (*United States* v. *Falk*, 204 U. S. 143, 152.) Section 16 contemplates but *one* examination or inspection, to be had in the discretion of the officers, *either on* the ship on arrival, *or elsewhere*, after "temporary removal."

Under the former method, the alien, *while yet on* the ship, is ordered either admitted, deported or detained for later special inquiry. The ship, until the making of that order, necessarily furnishes, and so its owner necessarily pays for, board and any hospital treatment of the alien. *Ergo* the obligation to pay therefor, in case the alien remains on board, *is imposed on the ship owner by the act itself*. In case of removal ordered, the act provides—

"such temporary removal shall not * * * relieve the * * * owners * * * of the vessel * * * from *any* of the obligations, which, in case *such* alien remains on board, would, under the provisions of this act bind said * * * owner."

In effect this clause declares that, though temporarily removed the obligation to furnish and pay for hospital treatment until examination rests on the shipowner to the same extent as if the alien were still on board ship awaiting examination.

And here attention is called to the patent error of the trial court in concluding as to section 16, that—

"It seems clear that the Government *can not* sustain the proposition that the alien

was *theoretically* on the vessel. (205 Fed. 949, 950.)"

As pointed out supra, the House committee said in 1903, that *the very purpose of the language* of the section as above quoted was that the—

"removal should *not affect* the *obligations* imposed by law *upon the vessel* and alien, *who shall be deemed constructively on board ship until lawfully landed.*"

The language admits of no other reasonable meaning; and the refusal of the trial court to accept that view led to erroneous judgment.

The Circuit Court of Appeals held that the only effect of this clause was (1) to preserve the obligation to return the alien, if ordered deported, and (2) to forbid the shipowner to claim that the alien had gained lawful admittance through the order. It did not attempt to explain why, of the many imposed by the act, these two obligations only were kept alive, by a clause reading "shall not relieve from *any* obligation."

The following are some of the obligations imposed: (1) To pay the "head tax" (sec. 1); (2) not to illegally land (sec. 8); (3) to receive the alien when returned to their care (sec. 16); (4) to pay maintenance and treatment, until determination of right to land (sec. 16); (5) to pay cost on land before and after order of deportation, in case of those unlawfully brought (sec. 19); and (6) to return, with a deported helpless alien, the accompanying attendant. These obligations remain in full force after the temporary removal, as if the alien were still

on board. He is deemed on board for *all*, not part purposes. Were all examinations had on shipboard, the duty to pay would be so plain that the owner, furnishing the service, would never think of billing on the Government therefor. The question is simple if we steadily remember that the alien is to be regarded as still on board; as if, for example, it had become impossible to use the ship's hospital, and the service was engaged on an adjacent ship.

The vessel owner bringing the aliens for landing, when he hands the manifest of aliens to the officers, says, in effect, "parati sunt." And if they be not so ready, he must make them so, because he has offered them for examination. If to be inspected on board, his ship's service would be used, as it was on the voyage over seas. If temporarily removed, he must still do so. He brought them over knowing the prerequisites to landing, and agreeing to submit to them, and his duty does not cease till the primary determination of the right to enter.

The last proviso of § 16. This reads:

"Where a suitable building *is used* for the detention and examination of aliens, the immigration officials shall there take charge of *such* aliens, and the * * * owners * * * of the vessels bringing such aliens shall be relieved of the responsibility *for their detention* thereafter until the return of such aliens to their care."

The defendant urged below that this proviso was mandatory, and deprived the officers of discretion to examine on board ship. This

contention is without merit in view of the language of the section and the House committee's explanation of its purpose. There was no purpose to affect the discretion already bestowed but only, *in the event removal should be required*, to have it to the buildings provided. This view is confirmed by reference to the agreed facts, which show that it has been the practice since 1891 to examine first and second cabin passengers on board—only those "not found clearly and beyond doubt entitled to land" and the steerage aliens being ordered to Ellis Island or to hospitals. (R. 48, 56.)

The Court of Appeals erred when it said "the Government officers * * * were, *in the language of the act*, in *charge of the immigrants* in question * * * *for all purposes*."

It read the words "for all purposes" into the proviso, thereby violating a fixed rule of statutory construction. (*United States* v. *Goldenberg*, 168 U. S. 95, 102–3; *United States* v. *Lexington Mills Co.* 232 U. S. 399, 409, 410; *United States* v. *McCord*, 233 U. S. 157–163).

Instead of saying the officers shall "take charge" *for all purposes*, it merely makes them responsible for the alien's detention—a duty which but for the proviso would have rested on the owner. To read "for all purposes" into the proviso, would nullify the preceding clause. Moreover, the "suitable buildings" covered by the proviso are only those "*used for detention and examination*." Private hospitals were *not so used*. On the contrary, the aliens, when cured, were brought *from* these hospitals *by the defendant*, to the Ellis Island

station, *where all* examinations were had. *Here* the immigration officers were stationed, and so in position to prevent escapes; which doubtless led Congress to relieve the steamship owner from responsibility for the safekeeping of aliens *while confined* in *these* buildings. It can not be supposed that Congress intended the Government should assume the burden of safeguarding aliens while being treated in various local hospitals not under Government control. Therefore, the *contention* that this proviso destroyed the discretionary power of removal and placed the immigration officers in charge of the alien for all purposes must, at most, be restricted to the charges on the nineteen aliens treated at Ellis Island.

The Court of Appeals also said that if Congress had meant to impose these charges on the owner it would have *expressly* so provided, as it did in the case of land maintenance cost of deported aliens. (Sec. 19.) This is specious reasoning; but it will not bear analysis. Section 19 deals only with the procedure for, and expense of return of those *to be deported*. And the whole expense feature was covered by the land maintenance and return clause. Section 16, on the other hand, deals not only with *ad interim* expense on removal before examination, but, as well, with at least six other obligations of the owner, all of which, save the single duty to detain, were to be preserved against him despite the removal. It was much easier to declare that *all* obligations, with the one exception covered by the proviso, should re-

main as if the alien were still on board than to specify each duty in detail. And, as appears from the House committee's report, the language was used for that reason.

Both the lower courts assert, without warrant in the record, that the Ellis Island hospital was built from "the head money tax of $4 paid by the companies." It was built in 1892 when the head tax was but 50 cents. (Act of 1882, 22 Stat. 214.)

The tax became $2 first in 1903, and was not raised to $4 until 1907. (32 Stat. 1213.) Even had it been a fact, how could it affect the meaning of language in section 16? Could the adventitious fact that the hospital had been built from a certain source give meaning to words first used eleven years after it had been put to use? If so, had it been built from some other fund, a different meaning would thereby attach to the words. (It will be noted, also, that private hospitals, not built from the fund, were always used for contagious cases.)

Excess in the immigrant fund.—Waiving the fact that the overplus is merely beyond the expenses of regulating immigration, but not beyond that needed for reports, salaries, etc., how does this feature aid interpretation? Accidental results, produced during two years of operation *after* the passage of an act, can not be invoked for such a purpose. Otherwise, if a deficiency had resulted in 1910 and an excess in 1911, we must temporarily change the meaning of the language from time to time as needed.

The suggestion, however, carries the idea that the charges ought to be paid from that fund. It was then available for but three specific uses: (1) To "defray the expenses of regulating the immigration"; (2) "the cost of Federal court reports"; and (3) "the salary of all employees", etc. These charges can not be classed under (2) or (3), and do not fall under (1). This is suggested by the agreed facts which refer to them as "in addition to"; i. e., *outside* of the total expenses of regulating immigration. The limited meaning of the phrase is seen by contrasting the act of 1882 with the present act. The former read:

"To defray (1) the expenses of regulating immigration under this act; (2) for the care of immigrants *arriving* in the United States; (3) for the relief of such as are in distress; (4) and for the *general purposes and expenses* of carrying this act into effect."

These charges, if incurred in 1883, would have been classed under (4) rather than (1) supra. And we must ascribe to clause (1) in the present act the meaning it bore in 1882; while the omission of uses (2), (3), and (4) of the act of 1882, and the substitution of two other uses, shows a clear intention to exclude this use. It is true the fund was by act of March 4, 1909 (205 Fed. 948), diverted into "Miscellaneous receipts" available for larger uses. But this *later* change can not affect the meaning to be given the language used in section 16 *in 1903*. At that time there were but three sources of payment: (1) The Government; (2) the alien; and (3) the ship-

owner. The only Government fund (immigrant fund) was not *then* available. The alien could only be required to pay *if removed on his own application*. Congress meant to lay it upon the owner, and did so, as an obligation he would have borne had the examination been on the ship. The "immigrant fund" might possibly be viewed as *impliedly* devoted to such a purpose provided all other expense connected with the care or maintenance of arriving aliens, pending determination of their right to enter, fell also upon the Government. But obviously there must be plain legislative authority to use public funds for these charges, particularly in view of the act of August 2, 1882 (22 Stat. 188), commonly called the "Passenger act," which requires vessels to provide hospital and other facilities for emigrants.

The contention that our construction suffers the officers to hold ships indefinitely as hospitals is without force. Under the present section 16, as well as all earlier acts, they were privileged to hold her long enough to examine the aliens on board. This inconvenience was a burden knowingly assumed when they undertook the business. They have no vested right to bring them; and must use the privilege upon the conditions imposed by the law or not at all. They must carefully examine them abroad, on receiving them, to make certain they would not later offer those not entitled to land. Only a responsibility born in part of the duty to bear charges will insure care on their part. In-

deed in earlier years, under lesser restrictions, shipowners advertised so that it became necessary to restrict them to escape a flood of undesirables.

The court of first instance sought to distinguish—though without clear purpose—the words "inspection" and "examination" in section 16, insisting that the former described the act if done on board; the latter, if done elsewhere. (205 Fed. 950.) There is no basis for such distinction. The words are synonymous, and used interchangeably in this and the other acts. Witness the following instances: (1) Section 16 provides for a single primary inquiry, either on ship *or* elsewhere. (2) Section 17 (opening clause) requires the "physical and mental *examination*" to be made by "medical officers," and, providing for the cost *thereof*, terms it "medical *inspection*." (3) Section 24 refers to "*examining medical inspector*." (4) Section 8 of the act of 1891 (26 Stat. 1084) provides they may either "there" *inspect*—

"*Or* the *inspection* officers may order a temporary removal * * * for *examination* (elsewhere); * * * and there detain them until a thorough *inspection* is made. But such removal shall not be considered a landing during the *pendency of such examination* * * *. During *such inspection*, after temporary removal, the superintendent shall cause such alien to be properly housed, * * * etc."

There are two phases to each "examination" or "inspection": (1) Inquiry by the

inspector to insure nonexistence of conditions (*other* than medical) described in section 2 of the act; and (2) the mental and physical inquiry by medical officers.

The same court (950) demonstrates that the phrase "while on land," in section 19, has a different meaning from the word "landing," in section 16, presumably to avoid application of the former phrase to these ad interim charges. The argument is wasted because the *whole* section (19) deals only with immigrants who are to be *returned*, and no part of it can be applied to those who are not to be returned but are finally admitted.

This word "landing" in the phrase "but such temporary removal shall not be considered a landing" does, however, furnish a strong argument for the Government. Wherever used it and the word "land" mean a lawful entry. Section 8 of the acts of 1903 and 1907 provides:

"Any person, including the owner * * * of any vessel, who shall *bring into* or *land* in the United States, * * * any alien, not duly admitted, etc."

The function of the owner is to *land* the alien. Until the landing is accomplished that duty is not completely discharged; and he does and should remain liable for his care.

Both lower courts asserted, and it seems conceded, that examination off-board *is for the convenience of the owner*. If so, it ought not to be assumed that in yielding him this benefit the Government shouldered an additional burden or that it surrendered revenue

enjoyed for over a quarter of a century—amounting, as shown by the department records, to over $102,000 in the port of New York for the year 1909 alone—but rather that the owner gaining this benefit at least kept such burden as he theretofore had borne. And this was the purpose of the "obligation" clause, according to the contemporaneous House committee report.

II.

Regulation and usage.

It is conceded the regulation in terms imposes these charges on the owner, no question of its meaning being raised. But it is claimed to be void as "inconsistent with the law." Defendant says the statute does not *expressly* impose this duty on the owner; and as the Government is the only other person that can pay, it must fall on it. This is a non sequitur. Equally might it be said the statute does not expressly impose the duty on the Government, and as the owner is the only other one who could pay, it falls on him.

While it is true that section 16 does not impose these charges *in terms* on the owner, the language (conferring discretion as to removal and saving all obligations against the owner as if the alien were still on board) in any view invites departmental regulation. Some rule of payment being essential, and the act being silent, it was a proper subject for instructions (under section 22) either in the form of written rule or practice long continued.

In *Haas* v. *Henkel*, 216 U. S. 480, this court said:

"Such regulation need not be promulgated in any set form nor in writing. In *United States* v. *McDaniels*, 7 Peters, 114, 115, it was said of departmental regulations that 'of necessity usages have been established in every department of the Government which have become a kind of common law,' etc."

In *United States* v. *Birdsall*, 233 U. S. 223, 234, the court said:

"For this reason * * * it was within the competency of the office to establish regulations and practices having the force of regulation, etc."

The regulations now involved are not additive to, but wholly administrative of the law. (*United States* v. *Antikamnia Chemical Co.*, 231 U. S. 654; *United States* v. *Foster*, 232 U. S. 515.)

As stated in the last-cited case, "the regulation executes the law." In the case at bar this administrative feature is taken care of (1) by written instructions and (2) by usage long continued and unbroken. So persistent was the latter that it endured against every protest, as well while the statute only mentioned shipboard examination, and while the clause in section 8 of the act of 1891 required housing, etc., as since the act of 1903.

Only during the 12 years when the act of 1891 was in effect might it have been fairly argued that it was inconsistent with the law. The trial court closed its eyes to this prolonged usage, giving as its sole reason for not

discussing "practical construction" that "the various *opinions* can not be regarded as practical construction." (205 Fed. 591.)

Even without legislative adoption of executive construction, the section must be so read, because the practice, *so long* adhered to by the departments, demands it. (R. 69 et seq.) In *United States* v. *Johnston*, 124 U. S. 236, 253, this court said:

"In view of the foregoing facts, the case comes fairly within the rule often announced by this court, that the contemporaneous construction of a statute by those charged with its execution, *especially when it has long prevailed*, is entitled to great weight; and should *not be disregarded or overturned*, except for cogent reasons, and unless it be clear that such construction is erroneous (cases)."

CONCLUSION.

It is respectfully submitted that the judgment of the Court of Claims should be reversed and the case remanded with direction to dismiss the petition.

FRANK DAVIS, JR.,
Assistant Attorney General.

JANUARY, 1920.

○

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1919.

No. 200.

THE UNITED STATES,
Appellant,

against

NEDERLANDSCH-AMERIKAANSCHE STOOM-VART MAATSCHAPPIJ (HOLLAND-AMERICA LINE),
Appellee.

Brief for Appellee

LUCIUS H. BEERS,
Attorney for Claimant.

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IN THE

Supreme Court of the United States

October Term, 1919.

THE UNITED STATES,
Appellant,

against

NEDERLANDSCH-AMERIKAANSCH STOOMVART MAATSCHAPPIJ (Holland-America Line),
Appellee.

No. 200.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR APPELLEE.

This appeal is taken by the United States from a judgment rendered by the Court of Claims on June 3rd, 1918, in favor of the Holland-America Line, claimant, for the sum of $16,993.50, being the aggregate of sums paid by the claimant at the demand of the United States Immigration Authorities, from May 27th, 1908, to December 9th, 1913, for expenses incurred in the treatment and maintenance in hospitals of alien steerage passengers brought to the United States on the claimant's vessels, and temporarily removed

from such vessels pending examination as to their right to enter the United States. All such aliens were finally admitted (R., 5-7).

The claimant contended: (1) that no legal liability rested on it to pay such expenses; (2) that the claimant was under no contract obligation to make such payments; (3) that there was no consideration for the payments made by claimants; (4) that such payments were made under compulsion and duress and were not voluntary, and (5) that Congress had provided an ample fund (known as the Head Tax) for the payment of such expenses, and that such expenses were chargeable against said fund (R., 1-4).

Facts.

Since the passage of the Immigration Act of 1891 the passenger steamship lines have contended that, under the immigration laws, they were not liable for the expenses of hospital treatment and maintenance of aliens who were legally brought to the country, but who had to be temporarily detained on account of illness before being ultimately admitted. The Treasury Department held over the steamship lines continually the threat that if payments were not made for the expenses incurred by the United States for such treatment and maintenance, aliens would not be removed from the vessels, but would be kept on board and treated there, thus turning the passenger vessels into hospitals and seriously crippling the business of the steamship lines. The lines, though

protesting at times, paid these expenses for a number of years, until, in 1908, the Cunard Steamship Company appealed a case, known as the *Toth* case, to the Secretary of Commerce and Labor, who decided in March, 1909, that the company was not liable for the expenses. The claimant-appellee, and other lines, thereupon ceased paying such bills for aliens legally brought, although paying without question bills for immigrants ultimately deported, and notified the Commissioner of Immigration that their action was taken because of the decision in the *Toth* case. For a few months after that decision the Government did not apply its usual compulsion to exact payment of the hospital bills, but in October, 1909, a ruling was made by the Treasury Department to the effect that such expenses were not a proper charge against the appropriation for the expense of regulating immigration. Thereafter payments were exacted as before the *Toth* case arose, under threats of detaining passengers on the vessels. All the payments made by the claimant and for which reimbursement is sought in this suit were made under compulsion of such threats (R., 10-35).

It was for charges accruing during the few months the compulsion on the part of the Government was suspended that the United States brought suit against the claimant in the action, *United States* v. *Holland-America Line,* hereinafter mentioned, resulting in a decision adverse to the Government's contention.

Although no such contention appears to have been made in the Court of Claims, the Attorney General now urges that the suit is one sounding in tort, and that, therefore, the Court was without jurisdiction.

The jurisdiction of the Court of Claims, is, as to demands against the United States, clearly defined by Section 145 of the Judiciary Code, also known as the Tucker Act, of March 3rd, 1887, as follows:

> "All claims (except for pensions) founded upon the Constitution of the United States or any law of Congress, upon any regulation of an executive department, upon any contract, express or implied, with the Government of the United States, or for damages, liquidaed or unliquidated, in cases not sounding in tort, in respect to which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty, if the United States were suable."

POINT I.

The claim sued on is founded both upon a law of Congress and upon a regulation of an executive department of the Government, and the Court of Claims clearly had jurisdiction.

The appellant's brief should be sufficient to establish this point without further citation of authorities. In that brief it is first asserted that the expense to which the claimant was put and for the reimbursement of which the judgment under review was rendered, was charged and collected under Section 16 of the Act of February 20th, 1907, 34 Stat. 898 (page 1 of Brief), and then it is contended that the claim is not founded upon any law of Congress, but is a claim sounding in tort (page 13).

A case arises under a law of Congress when "the right of either party depends on the validity of an Act of Congress," or when "the title or right set up by the party may be defeated by one construction of the Constitution or law of the United States, and sustained by the opposite construction."

Patton v. *Brady*, 184 U. S. 608, 611 (1901) and cases therein cited.

However, the case of *Dooley* v. *United States*, 182 U. S. 222 (1900), is decisive of the question. It was there held that the Court of Claims had jurisdiction over the recovery of duties illegally exacted upon merchandise imported into Porto Rico from the United States. The decision was based on the ground that the case was one founded upon an Act of Congress and therefore within the jurisdiction of the Court of Claims, irrespective of any tortious character of the acts of the Government's representatives in exacting the duties. After expressing the view that 'the words 'not sounding in tort' are in terms referable only to the fourth class of cases," namely, claims for damages, liquidated or unliquidated (page 224), the Court expressly held:

> "But whether the exactions of these duties were tortious or not, whether it was within the power of the importer to waive the tort and bring suit in the Court of Claims for money had and received, as upon an implied contract of the United States to refund the money in case it was illegally exacted, we thing the case is one within the first class of cases specified in the Tucker Act of claims founded upon a law of Congress" (page 228).

While in the *Dooley* case there was dissent with respect to the right to impose certain of the duties exacted, there was no dissent from so much of the prevailing opinion as held that the Court of Claims had jurisdiction of the claims in question.

In *United States* v. *Lynah*, 188 U. S. 445 (1903), a suit was brought against the United States for damages to lands flooded by water backed up by dams and other obstructions erected by the Government under an Act of Congress. The claim was sustained by this Court. Three justices expressed their opiniin that the jurisdiction of the court could "be supported irrespective of the question of contract or tort under the clause of the Tucker Act which vests the Court of Claims with jurisdiction of 'all claims founded upon the Constitution of the United States, or any law of Congress,' " citing the *Dooley* case.

An examination of the cases cited by the Government as sustaining its contentioa that the Court of Claims was without jurisdiction, shows that they are not in point. They hold, what is not disputed, that Congress has not permitted suits against the Government for mere torts, nor for tortious acts of its representatives, unless the claim is founded upon the Constitution, some law of Congress, or some regulation of an executive department. Attention is not drawn to any decision of this Court holding that when an officer or other representative of the United States, professing to act under a law of Congress, wrongfully exacts money from an individual, and pays the money into the United States Treasury, the United States has not authorized a suit for the recovery of such money.

Considering the cases cited by the Government:

In the *Ball Engineering Co.* case, 250 U. S. 46 (1918), the Government was not a party, but ap-

peared on the argument of the appeal and filed a brief. The action was against a contractor to whom the United States had delivered certain property left by a third party on premises where work had been going on for the Government. The United States gave the second contractor credit for the appraised value of the property, but stipulated that there was no guarantee of title or of peaceable possession, and that the Government would not be liable for any claim on account of the seizure. The decision was to the effect that the contractor who received the property was liable to the owner.

In *Tempel* v. *United State*, 248 U. S., 121 (1918), a claim for damages to submerged land along the Chicago River, caused by Government dredging, was considered. The Government, in prosecuting the work, believed that the land was part of the river bed. It was held that a suit for damages to such land was one sounding in tort, of which the District Court had no jurisdiction under the Tucker Act.

Basso v. *United States*, 239 U. S. 602 (1915), was a case on an appeal by a Spanish subject who sued the United States for damages for arrest and imprisonment on a charge of having smuggled goods into Porto Rico. It was conceded by the appellant that "the cause of action not merely 'sounded in tort,' but is based wholly upon the tortious actions of the agents of the United States" (page 606). It was not in any aspect brought within any of the four classes of cases of which the Court of Claims has been given jurisdiction.

In *United States* v. *Buffalo-Pitts Co.*, 234 U. S. 428 (1913), it was plainly held that there was an implied promise to pay the owner of property taken by the Government for public purposes, the owner's title having been recognized by the Government, and that the case was covered by the Tucker Act.

In *Peabody* v. *United States*, 231 U. S. 520 (1913), a claimant sued for damages for land lying between a fort and the shore because of the fact that guns in the fort could be fired across the land, and had in a few instances been so fired, the claim being advanced that the land had thus been appropriated by the Government. It was decided that there had been no appropriation.

The *Crozier case*, 224 U. S. 290 (1911), was decided with reference to an Act of June 25th, 1910, giving the Court of Claims jurisdiction of suits for infringement of patents.

Harley v. *United States*, 198 U. S. 229 (1904), was the case of a claim for damages for the use of a patented invention, and it was merely held that no contract between the claimant and the Government had been shown.

Russell v. *United States*, 182 U. S. 516 (1900), was a case of damages for the use of a patented invention, and it was held that if the petitioners had suffered any injury, it was through an infringement of the patents and not by breach of contract.

The *Schillinger* case, 155 U. S. 163 (1894), was a suit for damages for a wrongful use by a Gov-

ernment contractor of a patented invention. The transaction on which the claim was based was held to have been "tort pure and simple" (page 169).

In *Langford* v. *United States,* 101 U. S. 341 (1879), decided eight years earlier than the Tucker Act, it was held that the Court of Claims, as then constituted, had jurisdiction only in cases *ex contractu*, an dthat an implied contract to pay did not arise in the case of a tortious taking of lands for public use by an officer of the Government asserting Government ownership.

Gibbons v. *United States,* 8 Wall. 269 (1868), decided only that under the law then existing, the oGvernment was not liable on an implied assumpsit for the torts of its officers committed while in its service and apparently for its benefit.

The cases cited hold no more than that the United States cannot be sued for a tort, unless the case arises, (1) under the Constitution; (2) under a law of Congress, or (3) under a regulation of an executive department.

POINT II.

No liability was imposed by law upon claimant to pay the hospital expenses of aliens ultimately admitted to the United States.

The aliens in question were lawfully brought to the United States; otherwise the authorities would have ordered them deportd. They contracted during the voyage diseases which did not

require their deportation under the immigration laws, but neecssitated their being treated in hospitals until they could be examined as to their right finally to enter the United States.

A. *At common law the carrier would not be chargeable with the expenses incurred by a passenger through contracting an illness not the result of the carrier's negligence.*

Ordinarily it is the duty of a sick person to pay his own expenses. The fact that steerage passengers may have been poor does not create a rule of law requiring sombody else to pay the expenses of their illness. The steamship company had contracted to bring the passengers to the United States, and performed that contract when it had arrived here with them. If upon arrival here they needed medical treatment and hospital service, it was not the duty of the steamship company to provide them with such things, unless it had agreed to do so. No contention is made that the claimant had entered into any such agreement, and it is hardly necessary to cite authorities to show that no common law duty rested upon the carrier to maintain and treat passengers in hospitals after arriving in the Port of New York.

Neither did the bringing of steerage passengers to this country make the carrier a guarantor of the passengers' obligations to pay their own expenses after the voyage is ended.

B. *There was no statutory duty imposed on claimant to make such payments.*

It is not disputed that the Government had the power to impose upon steamship companies the duty of paying such charges, as the price of being permitted to bring immigrants to the United States. Indeed, in 1913, Congress did impose this duty upon steamship lines, but during the period covered by the payments involved in this action, there is no provision of law imposing such liability. Any such provision must clearly be found in the Immigration Act. The Act does provide (Sec. 19) that all aliens brought to this country "in violation of law" shall be deported on the vessel bringing them, and that the cost of their maintenance while on land, as well as the expense of their return, shall be borne by the owner of the vessel. By Sec. 20 it is provided that such aliens as have actually entered the United States "in violation of law, and such as become public charges for causes existing prior to landing," must be deported within three years, and the steamship company which brought them is required to carry them back to the country from whence they came, upon their being brought to the coast of the United States for that purpose.

A search in the Act for any provision imposing expenses upon steamship companies, except in the case of neglect or violation of law, will yield a negative result. There is nothing in the Act imposing liability when the alien is lawfully brought here, as was the case with all the aliens with

whom we are concerned in this action. The primary liability being on the passenger to pay his own expenses, there must be some clear words in the Act of Congress transferring such liability to the carrier. Here the familiar maxim, that a statute in derogation of the common law shall be strictly construed, is very applicable.

In *Sutherland on Statutory Construction*, Sec. 371, it is stated:

> "If a statute creates a liability where otherwise none would exist, or increases a common law liability, it will be strictly construed, and even when it is remediable, must be followed with strictness when it gives a remedy against a party who would not otherwise be liable."

In *Ransom* v. *Williams*, 2 Wallace 313, 317, the Supreme Court states the rule thus:

> "The statute is in contravention of the common law, and hence to be construed strictly."

And Justice Gray in *Northern Pacific R. R. Co.* v. *Whalen*, 149 U. S. 157, 164, said:

> "But this section (imposing liability for maintaining a saloon) creating a new liability, unknown to the common law, is to be strictly construed and is not to be extended beyond the clear import of its terms."

In *Fitzgerald* v. *Quann*, 109 N. Y. 441, 445, Justice Peckham discusses the rule in the following language:

> "* * * The rule itself is too securely and firmly established and grounded in our jurisprudence to be altered, other than by legislation."

We find no case holding that the common law imposed such a duty upon a carrier by water. In the case of *Laubheim* v. *DeK. N. S. Co.*, 107 N. Y. 228, the New York Court of Appeals declined to decide whether the duty of furnishing a surgeon rested on a steamship company, in the absence of some statute. The duty of providing a surgeon and medicines to emigrants was imposed upon steamship companies, in case of vessels carrying more than 50 emigrants, by Congress, in 1882 (Chap. 374, Sec. 5). This act requires the company to furnish a qualified surgeon, provided with surgical instruments and medicines, proper and necessary for diseases and accidents incident to sea voyages, and for the proper medical treatment of such passengers *during the voyage.*

When does the voyage end? It would seem to end when the vessel reaches port and is placed in a position to permit the passengers to disembark.

The carrier owes the passenger the duty of providing him safe means to land, and of delivering him his baggage and effects, but the voyage is certainly ended. It is the duty of the passenger to get off, and thereafter pay his own expenses for doctors and medicines. The passenger cannot stay on board and insist that he is still a passenger. If he is ill it is his duty to go—or have himself taken—to some suitable place for treatment. His possible poverty does not create a *rule of law* imposing on some one else the burden of paying for his treatment.

In the case of steerage passengers arriving at the Port of New York, they are not actually landed, but are turned over to the Immigration officials.

The Act of February 20th, 1907 (Chapter 1134, Section 16) provides that where a suitable building is used for the detention and examination of aliens, the officials shall there take charge of such aliens, and the transportation companies shall be relieved of their responsibility for their detention until such aliens are returned to them. No aliens are returned to the vessels or to the transportation companies unless they are found ultimately not entitled to land. This contingency does not apply to any of the aliens involved in this action. It is, therefore, made the duty of the Immigration officials to receive alien passengers coming to New York, at the Ellis Island station. This is a duty which the steamship companies have the right to insist shall be performed by the Immigration officials. When a steerage passenger is taken from the ship to Ellis Island, is not the voyage of the vessel bringing him from Europe ended so far as he is concerned? He may be found unfit to land finally, and may be sent back whence he came, but that would certainly appear to be quite another voyage. The ship he came on may be on the other side of the Atlantic before he has been examined and admitted.

As to the duty of the steamship company toward a passenger who is ill, an examination of authorities will show that no more is required at common law than that a sick or aged person is entitled to more care from a carrier than one in good health and strength. This is simply a corol-

lary from the rule, arising under the Law of Negligence, that due care is such as the circumstances require.

We are here concerned with the common law duty of a carrier toward a sick passenger, regardless of the question of restrictions upon immigration, unless such restrictions are legal and change the common law duty of a carrier in such cases. We are inquiring whether there are any restrictions in the Immigration Laws which impose upon a steamship company the duty of paying the debts of those whom it has brought to this country as steerage passengers. If the common law imposes such a liability, this action would never have been brought. We are asking, Where is a statute which changes the common law by making the steamship company liable for these expenses? If the law did not make the Company liable, the Immigration Authorities could not lawfully insist upon payment by the Company, merely because there were restrictions upon immigration. The duty of a passenger to pay his doctor's bill is not changed by the fact that he must show the authorities of the country to which he is going that he is a fit person to be admitted.

No argument can be made that an affirmance of this judgment would result in making immigrants public charges. As the fact has been established that the Head Tax fund was ample to pay all the charges involved in this action, there is no danger on this score. (R., 36.)

Since the year 1913, the steamship companies have had such charges imposed upon them by an Act of Congress, and know where they stand, and can adjust their business under the new liability.

C. *The immigration authorities could not, by adopting rules and regulations, impose such liability upon the steamship companies.*

The imposing of a legal liability upon persons is an act of the law-making power. The administrative branch of the Government might have discretion, within reasonable limits, as to the method of enforcing a law, but it could never enact a rule which creates or destroys a legal liability. This is a government of law and not of bureaucracy. If a steamship line is liable for the maintenance of a passenger after arriving in an American port, it must be because of a liability created by the common law or an act of Congress, or a valid contract. Congress is the national legislature. It exercises power delegated to it by the people, and cannot delegate this power to others.

Delegata Potestas Non Potest Delegari.

By Sec. 22 of the Immigration Act of 1907 the Commissioner-General is authorized to

> "Establish such rules and regulations, prescribe such forms of bond, reports, entries and other papers, and shall issue from time to time such instructions, *not inconsistent with law,* as he shall deem best calculated *for carrying out the provisions of this Act* and for protecting the United States and aliens migrating thereto from fraud and loss, and shall have authority to enter into contract for the support and relief of such aliens as may fall into distress or need public aid." (Italics ours.)

The only authority the Commissioner has received from the statute is to make rules "not inconsistent with law." He cannot add to the legal liability of the claimant, or change any rule of law imposing liability.

In *United States* v. *United Verde Copper Co.*, 196 U. S. 207-215, the Court used this language:

> "If Rule 7 is valid, the Secretary of the Interior has power to abridge or enlarge the statute at will. If he can abridge, he can enlarge. Such power is not regulation; it is legislation. The power of legislation was certainly not intended to be conferred upon the Secretary."

> "Certainly, under the guise of regulation, legislation cannot be exercised."

U. S. v. *George*, 228 U. S. 14-20.

But the exact question of the claimant's liability has been decided in an action brought by the United States against this very claimant, for similar charges which the claimant declined to pay. The payments demanded in that action were for hospital treatment of sixty-six aliens brought to New York in 1909. The action was tried in the United States District Court for the Southern District of New York in May, 1913. Judge Mayer, who tried the case, ruled as follows:

> "A steamship company which brings alien immigrants to the United States in its vessels cannot be held liable under Immigration Act Feb. 20, 1897, c. 1134, 34 Stat. 898 (U. S. Comp. St. Supp. 1911, p. 499), for the ex-

> pense of medical and hospital treatment given to such aliens who are finally admitted, but who, owing to having contagious diseases either themselves or in their families, must be cared for and the diseased ones cured before they can be properly examined as to their right to entry; but such expense is properly payable from 'Immigrant Fund' created by such act or from the appropriation for 'enforcement of the laws regulating the immigration of aliens' made by Act of March 4, 1909, c. 299, Sec. 1, 36 Stat. 982 (U. S. Comp. St. Supp. 1911, p. 521), and subsequent appropriation acts."

That opinion is reported in *United States* v. *Holland-America Line*, 205 Fed. Rep. 943.

The Circuit Court of Appeals affirmed the judgment of the Court below, in 212 Fed. Rep. 116. At page 118 the Court used this language:

> "This leaves us * * * to inquire whether the Act does impose the obligation to pay these expenses, upon the steamship companies. Concededly it does not do so expressly, and the United States has to rely upon necessary implications."

After considering the various provisions of the Act regarding the question of liability, the Court (at page 119) continued:

> "The Section (16) holds the companies liable for the detention and maintenance of immigrants landed temporarily for examination at places where they remain in the companies' charge. Then it goes on to provide that, where the Government uses a suitable building for detention and examination, the immigrant officials shall take charge of them,

and the companies shall be relieved of responsibility thereafter for their detention until the immigrants are returned for deportation. The buildings on Ellis Island are just such suitable buildings, erected, indeed, by means of the head money tax of $4 paid by the companies on each alien immigrant as required by the Act. So also the State hospitals where immigrants having contagious diseases were at that time sent until they could be removed to Ellis Island for examination were suitable buildings, and the expense so incurred was defrayed by the Government out of the same source. We think the immigration officials and not the defendant were in the language of the Act in charge of the immigrants in question at both places, for all purposes.

"This construction appeals to our sense of fairness. The companies are required to pay head money on the passengers they bring here to provide moneys for defraying the expense of regulating immigration under the act, and no use of such funds could be more appropriate than to apply them to the expenses of aliens pending examination who are rightfully brought here and are eventually admitted. It is stipulated by the parties that these moneys are more than enough in amount to do so after payment of all other expenses. If Congress had thought it just that the companies should pay these charges, we thing it would have said so in express terms, as it did in the case of immigrants brought here in violation of law. It seems to us that the rule adopted by the immigration authorities was not consistent with law and was oppressive because it compelled the companies to pay in order to escape the alternative of having their steamers turned into hospitals and

houses of detention. Such payments were not voluntary. They could not in the nature of things have been resisted."

The judgment of the Circuit Court of Appeals was affirmed in this court.

POINT III.

Claimant was under no contract obligation to pay such expenses.

The Government contends that the claimant had agreed to pay the expenses in question. This contention is based on a letter written by the claimant, July 25, 1894, to the Commissioner of Immigration of New York (R., 12).

This letter contains a promise, on the part of the claimant, to pay the cost of maintenance of alien passengers pending examination at Ellis Island *until the matter should be decided diffcrently by proper authority.*

A. *The alleged promise was made under duress and compulsion.*

It cannot be disputed that it was the threats of the immigration authorities which compelled the claimant to write the letter of July 25, 1894. The stipulated facts show that the threats were made and that they had the expected and desired effect—that of making the steamship companies agree to pay the expenses in question. Indeed the letter was written to the Commissioner of

Immigration in reply to one from him of the day before, plainly showing the determination of the authorities to examine and detain aliens on shipboard unless the companies would agree to pay hospital and maintenance charges (R. 11, 12). An explicit threat had been made in a letter dated July 20, 1894, that examination would be made on shipboard unless the companies would agree to pay such expenses (R. 11).

To understand the full significance of the allegations and proofs on the subject of duress, it is necessary, first, to consider what would be the result for the modern passenger steamer, if the Government insisted upon making the examination of arriving aliens on the ship itself, and refused to remove them to places where they could be properly examined and the sick be treated.

Most immigrants arrive at the port of New York, and it is well known that the Ellis Island establishment at that port was especially constructed and designed as a place where such examination might be held. The arrangement of the Ellis Island plant is, therefore, a fair representation of what the examination requires. Ellis Island, is, in part, a prison, in part a hospital, in part a courthouse, in part a transportation bureau, and in part a special arrangement of runways and enclosures which facilitate examination. One important element in the efficiency of this plant is the fact that it is on an island reached only by boats controlled by the Government, so that no one can either come or go without the Government's consent. A large passenger steamer is not well adapted for use as a place

for the detention or examination of aliens especially when she is lying at her pier. The mere problem of detaining the large number of aliens who sometimes arrive on a ship would make it necessary to manage the ship as a prison for a period of several days together, and, while the ship is thus put on a prison basis, it is at the same time necessary that she be unloaded and loaded again, and that other preparations be made so as to permit her to sail after a few days in port. If, as has been repeatedly threatened by the Government, sick aliens were left on board steamships, the steamship companies would soon be compelled to abandon business. It is not necessary to exercise any imagination in this connection.

A case actually occurred in the business of this claimant where, if fifteen cases of measles, which broke out among children arriving on one of the claimant's vessels had been treated on board, the ship would have been tied up at her pier for two months. That time had elapsed from the arrival of the ship until the last of the children was ready to leave the hospital and be admitted to the United States.

Regular sailings of the claimant's ships under like circumstances would become impossible. No steamship line could refuse to yield to the Government's threats.

Congress recognized this situation in the Immigration Act of 1903, and again in 1907, when it provided that where a suitable building is used for the detention of aliens "the immigration officials shall there take charge of such aliens."

To call an agreement like that set forth in the letter in question a "contract" is farcial.

> "Consent is the very essence of a contract, and if there be compulsion there is no binding consent."

United States v. *Huckabee*, 16 Wallace 414, 431.

The case of *Swift Company* v. *United States* (111 U. S. 22), was almost identical with the present one as regards duress. The question had arisen between the Treasury Department and the manufacturers of matches whether the discount allowed on proprietary stamps, then required, was to be paid in money or in stamps. The treasury officials had ruled that it was to be in stamps, and had declined to deal with the manufacturers on any other basis. A protest was at once made, but had been innefectual. The manufacturers had submitted through a long series of years, and accounts between them and the Treasury Department had been settled as had been required by the ruling of the Department. The Supreme Court subsequently held that ruling to have been erroneous. At page 28 it is said:

> "This was in effect, to say to the appellant, that unless it complied with the exaction, it should not continue its business; for it could not continue business without stamps and it could not purchase stamps except upon the terms prescribed by the Commissioner of Internal Revenue. The question is, whether the receipts, agreements, accounts, and settlements, made in pursuance of that demand and necessity were voluntary in such sense as to preclude the appellant from subsequently insisting on its statutory right.

"We cannot hesitate to answer that question in the negative. The parties were not on equal terms. The appellant had no choice. The only alternative was to submit to an illegal exaction, or discontinue its business. It was in the power of the officers of the law, and could only do as they required. Money paid or other value parted with, under such pressure, has never been regarded as a voluntary act within the meaning of the maxim, *volenti non fit injuria.*"

Judge Mayer in the *Holland-America* case (205 Fed. Rep. 943-951), in considering this question used the following language:

"The threats to detain aliens of this character on the vessel were such as to amount practically to duress.

"In these days no steamship company, in justice to its passengers, citizen or alien, and to its freight obligations, could afford to turn its vessels lying at our docks into hospitals and prisons, and, in such circumstances, it is not surprising that the defendant was willing to take any course which would relieve it from such an emergency.

"The immigration officials had no right to order the deporation of these aliens, and if the aliens could have been detained on the vessels while recovering from these non-excludable diseases, some of the vessels would have been detained for weeks—a result neither contemplated nor justified by the statute.

"If the plaintiff (the Government) had no right to enforce payment for the maintenance of these aliens ultimately admitted, then any agreement to pay for such maintenance lacks validity. The agreement relied on by pl[illegible]

> tiff was made under duress and without consideration, and, even if it were admitted (for the sake of the argument) that the agreement of July 25 constituted a contract, that contract became inoperative, after the Act of 1903 became law, and also by its own terms when the Secretary of Commerce and Labor decided the *Toth* case"

B. *The alleged promise expired prior to the arrival of any of the aliens in question.*

The promise in the letter, even if valid for any purpose, was limited to a time when the question in dispute should be decided differently by proper authority. And when the claimant declined to be further bound by the letter, proper authority had already decided the matter twice in favor of the steamship companies. The first decision was an act of Congress, in 1903, and the second, a ruling by the then Secretary of Commerce and Labor, Mr. Strauss, shortly before going out of office, about March 3, 1909.

We will take the Secretary's decision first. This decision was rendered on an appeal taken by The Cunard Steamship Company, Ltd., from a ruling requiring it to pay hospital charges in the case of a family named Toth, arriving on one of its steamers. As reported by the solicitor, Hon. Charles Earle, the secretary reached the conclusion that the companies were not liable for the expenses of maintaining and treating alien passengers in hospitals. He concluded further:

> "The expense of such hospital treatment, moreover, would appear to be a proper charge upon the immigrant fund" (R., 26).

While the ruling was no tfollowed by the Secretary's successors, that can make no difference. Proper authority had decided and claimant notified the Immigration Authorities that its agreement was at an end (R., 26, 27).

Congress must certainly be considered a proper authority in deciding what the law should be as to the question at issue, and in 1903 it enacted amendments to the Immigration Act. By Section 16 of that Act, it was provided that

> "where a suitable building is used for the detention and examination of aliens the immigration officials shall there take charge of such aliens, and the transportation companies, masters, agents, owners and consignees of the vessels bringing such aliens shall be relieved of the responsibility for their detention thereafter until the return of such aliens to their care."

A building such as the Act contemplates was maintained at the port of New York during all the years when these charges arose (R., 10).

But such a promise as that enacted from the steamship company was one that could be recalled at any time, unless, on account of the principle of estoppel, it should be held binding up to a certain period. If there was a legal liability on the part of the claimants to pay the charges, a contract was superfluous. On the other hand, if claimant promised to continue to do certain things which it was not legally called upon to do, it could not be required to go on continuing these things forever. It could at any time withdraw its promise. The promise being without any

legal consideration, except, possibly, as to acts already done before the promisor notified the Government it would not be further bound by its promise, it could not be held for failure to perform in the future.

C. *If the letter had constituted a legal contract when made, the consideration for it ceased as to any aliens who arrived after the passage of the immigration Act of* 1903.

Even if the Government may have been right in its contention that it could compel the steamship companies lawfully to turn their ships into hospitals, certainly after Congress directed that immigrants should be removed to Ellis Island, there could be no consideration for the alleged ppromise of the claimant to pay the charges in question. It was then clearly the duty of the immigration officials, at least at the port of New York, to remove incoming aliens to Ellis Island.

> "A contract to pay an officer for doing his official duty, or to pay him a sum in addition to his statutory fees, cannot be enforced." (*Studley* v. *Ballard,* 169 Mass. 295.)
>
> "The performance of an act, which a party is under a legal obtligation to perform, cannot constitute a consideration for a new contract."
>
> *Robinson* v. *Jewett,* 166 N. Y. 40; citing authorities.

POINT IV.

These expenses were payable out of the head tax fund, provided by Congress for that purpose, and ample in amount.

The Immigration Act of 1907, in force when these aliens arrived, provided for the collection from the steamship companies of $4 for each immigrant brought, and declared that the money thus collected, "shall be paid into the treasury of the United States and shall constitute a *permanent appropriation* to be called the 'Immigrant Fund' to be used under the direction of the Secretary of Commerce and Labor to defray the expense of regulating the immigration of aliens into the United States." (Italics ours)..

This head tax was first established by the Act of Congress of August 3, 1882 (22 Statutes 214). It was increased in amount by Congress from fifty cents to four dollars as the aggregate expense of regulating the immigration of aliens has increased, but in all subsequent immigration acts it has been provided that the moneys obtained by the Government from this source shall be used to defray the expense of regulating the immigration of aliens.

Shortly after the head tax was established, the power of Congress to create such tax was challenged, and this led to the decision of *Head Money Cases* (112 U. S. 580). The Supreme Court there upheld the power of Congress to impose this tax and based its decision in part on

the declaration of the statute as to the use which was to be made by the Government of the funds so collected. In earlier decisions, the Court had held that the power to impose such a tax did not belong to the States, and if it should now deny the power to Congress to pass such an act, the country would be left without a fund available for this purpose. The Court said on this subject (pp. 590-1):

> "That the purpose of these statutes is humane, is highly beneficial to the poor and helpless immigrant, and is essential to the protection of the people in whose midst they are deposited by the steamships, is beyond dispute. That the power to pass such laws should exist in some legislative body in this country is equally clear. This Court has decided distinctly and frequently, and always after a full hearing from able counsel, that it does not belong to the States."

Various objections to the head tax were raised in the *Head Money Cases* based on the claim that the constitutional limitations on the taxing authority of Congress had been violated. As to this, the Court held:

> "But the true answer to all these objections is that the power exercised in this instance is not the taxing power. The burden imposed on the ship owner by this statute is a mere incident to the regulation of commerce—of that branch of foreign commerce which is involved in immigration. * * * The sum demanded of him (the ship owner) is not, therefore, strictly speaking, a tax or duty within the meaning of the Constitution. The money thus raised, though paid into

> the treasury, *is appropriated in advance to the uses of the statute, and does not go to the general support of the government.* It constitutes a fund raised from those who are engaged in the transportation of these passengers, and who make profit out of it, *for the temporary care of the passengers* whom they bring among us and *for the protection of the citizens among whom they are landed"* (Italics ours). (pp. 595, 596).

It can hardly be necessary to argue that the cost of the hospital treatment of the aliens referred to in this complaint, and the expense of maintaining accompanying relatives, is included in the general expression, "the expense of regulating the immigration of aliens into the United States," to meet which the Head Tax was levied. If an alien arrives in New York suffering from measles, it is a necessary part of the regulation of the immigration of that alien that he should be cared for until he is fit to go about. And if a child, it is only proper that some relative should stay with him, and the expense this entails is a part "of the expense of regulating the immigration of aliens."

The wide reach of the expression "regulating immigration" was commented on by the Supreme Court in the *Head Money Cases.* The Congressional Act of August 3, 1882 (22 Statutes 214), which was there under consideration, covered the whole range of the activity of the Federal Government in dealing with arriving aliens. It was entitled, "An Act to regulate immigration," and on the subject of the meaning of that phrase the Court said:

> "The title of the act, 'An act to regulate immigration,' is well chosen. It described as well as any short sentence can describe it, the real purpose and effect of the statute. Its provisions, from beginning to end, relate to the subject of immigration, and they are aptly designed to mitigate the evils inherent in the business of bringing foreigners to this country, as those evils affect both the immigrant and the people among whom he is suddenly brought and left to his own resources" (p. 595).

It is conceded that the amounts collected from the steamship companies during the years covering the arrival of the aliens in question were more than sufficient to pay all expenses, including the sums paid by claimant and herein sought to be recovered (R., 198).

Throughout the immigration act, it is recognized that the expenses of regulating the immigration of aliens should be borne by the so-called Head Tax, and expenses are not imposed upon the steamship companies, except as penalties for neglect of duty and violation of law.

Throughout the Immigration Act of 1907, wherever expenses are dealt with, they are charged to the immigrant fund, except where the element of punishment is involved. For example: In the latter part of Sec. 19 it is provided that if a person who has been ordered deported is required as a witness, he may be detained, but this must be at the expense of the immigrant fund. Late on in the same section, if an insane alien ordered deported is unable to travel with safety, he may be detained, again at the expenes of the

immigration fund. On the other hand, expenses are repeatedly thrown on the steamship companies, but always for the express or implied purpose of punipshment.

In Sec. 19 aliens brought *in violation of law* must be carried back by the steamship company at its own expense, and the cost of their maintenance while on land must be borne by the company.

In Sec. 20 it is provided that aliens who have actually entered the United States *in violation of law,* and those that have become public charges *for causes existing prior to landing* shall be taken back at the expense of the steamship companies that brought them. Under the Immigration Act of 1903, the steamship companies had also been required to pay one-half the cost of the *inland* transportation, but by the Act of 1907, Congress recognized the principle that expenses must be thrown on the immigrant fund and not on the steamship companies, except in cases where the companies had been remiss. The Committee of the House reported as follows (59th Congress, 1st Session, Report 4, 912):

> "In the case of aliens who have been permitted to land, but subsequently are found to have been unlawfully landed, and therefore, subject to deportation, Section 20 of the present law is construed as placing the cost of deportation on the transportation companies.
>
> "*This appears to be unjust.* The fact that our immigration officials fall into this error of landing such aliens is evidence that the transportation companies have not been remiss in the matter. The cost of deportation

> of aliens who have been landed should be borne by the parties responsible for their illegal entry. If this is impracticable, it should be borne by the Immigrant Fund" (Italics ours).

In accordance with this principle, the Committee amended Section 20 and threw one-half of the cost of inland transportation on the contractor or other person by whom the alien was unlawfully induced to enter the United States, and if that could not be done, the immigrant fund should bear the expense.

These examples show he attitude of Congress to have been that the steamship companies should be put to expense only when they had violated the law.

The provisions of the Immigration Act also show that the Head Tax was intended, among other things, to give financial aid to the immigrants. Section 22 of the Act gives the Commissioner-General power to employ funds raised by the Head Tax for the relief of aliens where they require public aid.

So here we have an ample fund collected under an act of Congress from steamship companies, mostly foreign corporations, and collected to pay the expenses of regulating immigration, declared by the Supreme Court to be a humane provision, highly beneficial to the poor and helpless immigrant, designed for his temporary care on coming to this country, and essential to the protection of our own people. And notwithstanding this ample protection, the steamship companies have been required to pay twice. This view puts the

United States in the unenviable position of having collected from the steamship companies an ample fund to pay for the handling of alien immigrants brought by the companies, and then by threat of ruining their business, having forced the companies to pay again.

It is submitted that Congress cannot have intended to do this, and the Immigration Act of 1907, certainly does not direct this to be done.

POINT V.

The payments having been involuntarily made under compulsion and duress, claimant is entitled to recover the amounts paid.

Money extorted under duress may be recovered without a previous demand therefor.

Cobb v. *Charter,* 32 Conn. 358.

When payment is made to secure a right which the party was entitled to without payment, but could not obtain otherwise, or when it is made on a wrongful demand to save the party from some given mischief that he could not otherwise avoid, it is not voluntary, and may be recovered.

Corkle v. *Maxwell,* Fed. Cases No. 3231.

It is enough that the party pays reluctantly in consequence of an illegal demand, and without being able to regain possession of his property, except by submitting to the payment.

Maxwell v. *Griswold,* 51 U. S. 24.

The payment of an illegal tax is not voluntary, though no protest be made, for the collector is bound to collect the ax, and a protest would be unavailing.

Adams v. *U. S.*, 1 Ct. Cl. 306.

Where the treasury gives to a collector of customs a pperemptory admonition to deposit all money received by him in the treasury, it will not be deemed a voluntary payment as to a portion of the money to which he is entitled.

Ellsworth v. *U. S.*, 14 Ct. Cl. 382.

The payment into the treasury of all fees and collections, made by a collector under the authoritative requirement of the department, is not a voluntary payment, though made without protest, and does not prevent him from suing to recover his percentage of the fees..

Lawson's Case, 14 Ct. Cl. 332.

A superintendent of alien passengers, accompanied by a police officer for the purpose of enforcing obedience to his orders, went on a vessel arriving with alien passengers on board, and demanded head money of these passengers under color of his office, but without lawful authority (the State law under which he acted being unconstitutional); told the master that if he did not comply with the demand, he could not land his passengers, and gave him a receipt for the head money in the name of the commonwealth. The vessel could not have been entered at the Custom House without a certificate from the superintendent that the head money had been

taken care of. *Held*, that the payment was by compulsion and not voluntary, and the owner of the vessel could recover the money, whatever may have been the contract between him and his passengers.

Cunningham v. *Munroe*, 81 Mass. 471.

The case boiled down is this:

A. A steamship company brings immigrant steerage passengers from Europe to New York, a perfectly lawful business.

B. The immigrants contract during the voyage certain ailments, and need treatment after the voyage is completed.

C. It is the legal duty of the immigrants to pay their own expenses for such treatment.

D. The Immigration authorities say to the steamship company, "You shall not pursue this lawful business unless you agree to pay these expenses, and we shall not even allow you to protest against paying."

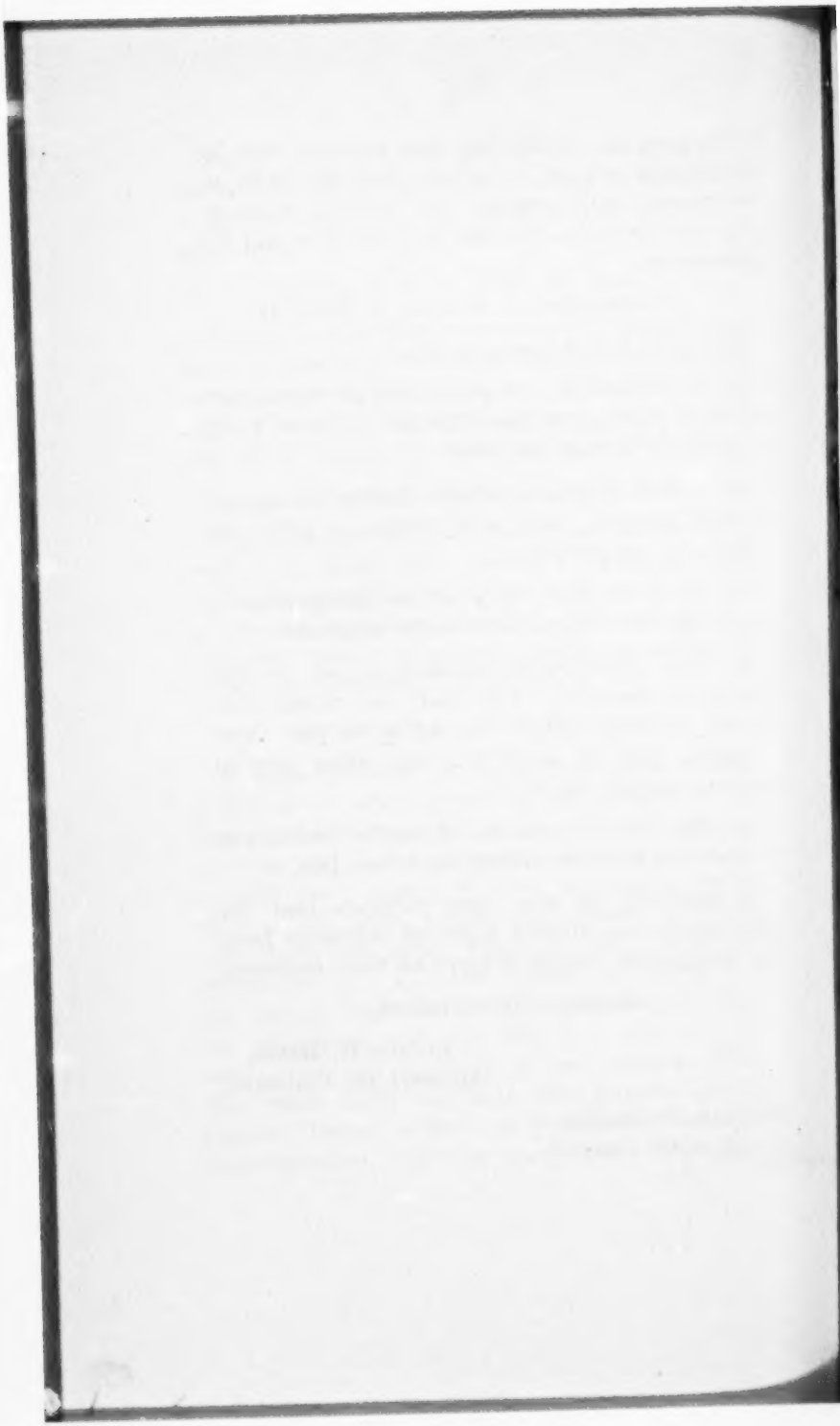
E. The Company has no alternative but to pay or have its business ruined, and does pay.

In addition, we may here reiterate that the Government has already collected indirectly from the immigrants enough to cover all these expenses.

Respectfully submitted,

LUCIUS H. BEERS,
Attorney for Claimant.

HOWARD MANSFIELD,
Of Counsel.



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IN THE

Supreme Court of the United States

OCTOBER TERM, 1919.

No. 200 53

THE UNITED STATES,

Appellant,

against

NEDERLANDSCH-AMERIKAANSCH STOOM-VART MAATSCHTPPIJ (Holland-America LINE),

Appellee.

SUPPLEMENTAL BRIEF FOR APPELLEE.

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Of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1919.

THE UNITED STATES, Appellant, against NEDERLANDSCH - AMERIKAANSCH STOOMVART MAATSCHTPPIJ (Holland-America Line), Appellee.	No. 200

APPEAL FROM THE COURT OF CLAIMS.

Supplemental Brief for Appellee on Reargument.

POINT I.

The case was clearly within the jurisdiction of the Court of Claims.

The Government contends that the payments were tortiously exacted (if not voluntary), and that consequently the Court of Claims had no jurisdiction (pages 18 and 19). At the same time and throughout its brief the Government insists that the payments were made under a statute and also under a contract. Thus in the brief for the

United States in the case of *United States* v. *Holland-America Line*, No. 408, October Term, 1914, expressly adopted and restated by Counsel for the Government in this case, counsel said: "Interpretation is demanded of Section 16 of the Immigration Act of February 20, 1907 (Brief, pp. 20 & 21).

In the *Gibbons* case (8 Wall. 269), which the Government relies upon in support of its plea against the jurisdiction of the Court of Claims, the plaintiff sued to recover the differences between the contract price and the market price of oats, which he had agreed to sell to the Government. The Government had at first refused to accept the oats at the time they were to be delivered under the contract and later its officers required the plaintiff, by threatening to withhold money due him, to furnish the oats. The Supreme Court held that the plaintiff could recover only the contract price. It was said that the plaintiff had the option of delivering the oats and recovering the contract price, or refusing to deliver them at all. No duress was found. The Court said: "But from whatever motive he (the plaintiff) may have consented to renew his agreement and proceeded to its fulfillment, its terms were the same." It is easily seen that no tort was really involved in the action.

See also cases cited in appellee's main brief (pp. 5-10).

POINT II.

In interpreting section 16 of the Immigration Act, the first things to be considered are the fundamental policy and purpose of the Act.

As stated by this Court in the *Head Money Cases* (112 U. S. 580), the purpose of this Act and similar acts "is humane, is highly beneficial to the poor and helpless immigrant and *is essentially to the protection of the people in whose midst they are deposited* by the steamships" (page 591). (Italics ours.)

In furtherance of this purpose, the steamship companies are required to make, at the ports of embarkation, medical and other examinations for preventing the sailing of persons whose admission to this country would be harmful to its citizens.

The steamship companies are also under the statutory duty of providing a duly qualified physician on each ship on which a large number of persons are to take passage and of providing a supply of suitable and necessary medicines.

It is submitted that where these statutory requirements have been complied with, as they were in all the cases involved in this suit, the statutory duties as well as the common law duty of the steamship company were at an end, except with respect to the ordinary duties of a common carrier. It follows that, with regard to the cases of contagious but curable diseases of aliens, arising during the voyage and attributable in no way

to neglect on the part of the steamship company and resulting in no bar to the ultimate admission of such aliens, as were the facts in every instance under present consideration, the steamships company was under no common law or statutory obligation to bear the hospital charges or living expenses of these immigrants after the arrival of the vessel in the port of New York, where it is found, as an undisputed fact, that there were suitable buildings used for the detention and examination of aliens. For the statute expressly provided, "that where a suitable building is used for the detention and examination of aliens, the immigration officials shall there take charge of such aliens, and the transportation companies, masters, agents, owners and consignees of vessels bringing such aliens shall be relieved of the responsibility of their detention thereafter until the return of such aliens to their care."

The return of such aliens to the care of the transportation companies thus referred to could only occur where such aliens after detention and examination were found to be disqualified for admission to this country. It is found that there were no such cases among the aliens for whose hospital and other charges during detention in charge of the immigration officials this suit was brought.

POINT III.

The steamship companies bringing steerage passengers to New York had an absolute right to require the Immigration authorities to remove such aliens to Ellis Island for detention and examination.

The Government in its brief (page 15) makes the statement that the immigration officials were expressly authorized by Section 16 of the Act of 1907, to go to vessels and there inspect all such aliens, or they might instead order a temporary removal of such aliens for examination at a designated time and place. But this statement is not a complete nor a fair statement, so far as the Port of New York is concerned, since as already pointed out, it is expressly provided in that Section that where there is a suitable building used for the detention and examination of aliens, the immigration officials shall there take charge of such aliens. In the case of a Port equipped with such a building, which is found to have been the fact at the Port of New York, provision in the Immigration Law for an alternative temporary removal of such aliens is not applicable. That provision applies only where there is no suitable building used for the purposes indicated.

The decisions hold that permissive words in a statute conferring power or authority upon public officers or bodies will be held to be mandatory when the act authorized concerns the public interests or the rights of individuals.

Ralston v. *Crittenden*, 13 Fed. Rep. 508.
Supervisors v. *U. S.*, 71 U. S. 435.
People ex rel. v. *Common Council*, 140 N. Y. 300.
People ex rel. v. *Supervisors*, 51 N. Y. 401.

The above decisions refer only to permissive words. But in the statute in question, the word "shall" is used and no more mandatory or controlling word can be found.

The attitude of the Government is that everything that was to be done was for the benefit solely of the steamship companies. This is a highly prejudiced view of the situation. The public at large are interested in the matter. The public are interested in ocean transportation of freight, passengers and mails, and it is greatly to the public interest that steamship companies shall be able to maintain a regular and reliable schedule of sailings. Ships are not suitable places for the detention and treatment of steerage passengers, and every conceivable consideration points to the desirability of having steerage passengers removed from the vesselsl as soon as they arrive in port, and taken charge of in buildings for their detention and examination, as was clearly contemplated and provided in the statute in question.

POINT IV.

No liability was imposed by the common law upon an ocean carrier to pay such expenses as are involved in this action.

The Government contends at page 16 of its brief that the companies were primarily liable for these expenses. This we deny. The primary liability rests upon the persons benefited, to wit: the steerage passengers themselves. The Govrnment's contention to be sustained must be based either upon the common law, upon a statute or upon a contract. We have in our original brief shown that all the authorities negative the contention that the common law imposes any such liability.

In the absence of a binding usage or special contract with the carrier, steerage passengers are not entitled to be furnished with bedding.

The Centennial, 131 Fed. Rep. 816.
Defrier v. *Nicaragua,* 81 Fed. Rep. 745.

The steamship companies owe a steerage passenger no duty to furnish doctors or medicine other than that imposed by the statutes.

Allan v. *Steamship Co.,* 132 N. Y. 91.

The Federal statutes require a carrier by water to provide a physician and medicines suitable to the voyage in case more than fifty passengers are carried. This clearly shows that no liability was imposed by the common law upon ships to furnish such things. The British Merchant Shipping Act

contains a provision requiring a medical practitioner on a ship carrying fifty steerage passengers, or carrying three hundred persons on board in any case. But the duty to furnish doctors and medicine during the voyage is one thing; any duty involving such service after the end of the voyage is quite another thing.

When Does The Voyage End?

A "voyage" is the transit of the vessel and ends when the vessel is safely moored at her last port of discharge.

The Martha, 16 Fed. Case 860;
The Mary Adelaide Randolph, 93 Fed. Rep. 222.
The Elizabeth, 8 Fed. Cas. 484.
Grannon v. *Hartshorne*, 10 Fed. Cas. 967.

In the case of *The Elizabeth*, *supra*, it is said: "The voyage is ended within the intendment of the maritime law when the vessel is safely moored in the port of discharge and is ready for unloading."

The phrase "end of voyage" when construed literally means the arrival of the vessel.

Bedford v. *Drew*, 46 Mass. 188.

The relation of passenger and carrier continues until the journey has been concluded, and the passenger has left the carrier's premises, or has had a reasonable time to do so.

5 A. & E. Encyclopedia of Law, 497.

POINT V.

No duty to pay such charges was imposed by statute.

The Government in its brief (page 1) asserts that the sums collected from the Appellee were charged under Section 16 of the Act of February 20, 1907. We presume from this statement that counsel for the Government cannot cite any other statute in support of its contention that some language in Federal legislation imposes the duty upon a steamship company of paying these expenses.

The Government's brief sets out fully what it considers the relevant parts of this statute. Leaving out what we contend is irrelevant so far as the Port of New York is concerned, we find the Government's contention that the steamship companies are liable is based upon a provision substantially as follows: "Upon the receipt by the immigration officers at the Port of New York of the lists or manifests of incoming aliens provided for in Sections 12, 13 and 14 of this Act, it shall be the duty of the immigration officials to remove such aliens to a suitable building used for the detention and examination of such aliens, and there take charge of them, and the transportation companies shall be relieved of the responsibility for their detention, unless and until the return of such aliens to their care in cases where such aliens are found not entitled to land."

It would tax one's imagination very severely to find anything in the above language imposing any obligation or duty upon steamship companies

to pay either hospital or other charges of aliens who after the immigration officials have taken charge of them are found entitled to land. The Government says that such language is the basis of the charges which the Appellee was compelled to pay. But instead of imposing upon the steamship companies any liability with respect to the payment of such charges, this language expressly exempts the companies from any such liability, for what can "take charge of such aliens" mean except to take entire responsibility for their care, maintenance and such medical aid as they may require. The declared revival of responsibility of the transportation companies upon the return of undesirable aliens "to their care" necessarily involves the conclusion that such aliens had been in the "care" of the immigration officials from the time those officials took charge of them.

The provision relieving the transportation companies from responsibility for the detention of such aliens thereafter until the return of such aliens to the care of the companies could relate only to such aliens as on examination after detention should be found by the immigration officials to be unfit for admission to the country, for the aliens found to be admissable after being cured would never be returned to the care of the transportation companies, and consequently the responsibility for either their detention or their care by those companies could never revive; but from the moment the immigration officials took charge of them for detention, examination and care, all responsibility of whatever description for these aliens on the part of the transportation companies absolutely ceased.

POINT VI.

No contract existed by which the Appellee was obligated to pay these charges.

The contention is made that the immigration officials could examine steerage passengers on board ship, and that since the exercise of their legal right would cause a loss to the steamship company, it was perfectly lawful for the company to agree, in consideration of the officials removing the passengers from the vessel for examination, to pay the charges in question. If the immigration officials had the right to examine and detain for examination the steerage passengers on board the vessel, and also the right to refrain from so doing, a consideration for a promise made by the steamship company could be worked out, but we have seen that in the case of the Port of New York the officials had no such right, but were directed by mandatory words in the statute to take the passengers from the vessels for detention and examination.

The Government contends, however, that a letter written on December 20, 1909, to the Immigration Commissioner is evidence of a valid contract on the part of the Appellee to pay the charges in question. This letter was written after the Appellee had been notified that its ships would be used as hospitals, unless it agreed to pay the charges in question. Having no choice, it said that it would make payments, but added that such payments should be made without prejudice to its contention that it was not liable for the charges.

The statement was added (under compulsion) that there was no intention to make protests or bring actions to recover such payments. Since the steamship lines had been peremptorily notified that they must agree in advance to make such payments, or have their business seriously hampered and interfered with, there was nothing else for them to do. Stating that they did not intend to protest or bring actions to recover such payments, did not amount to a binding agreement not to bring such actions. We have here a case involving the elementary principle of law that a contract requires a consideration. If they had the right to bring actions to recover payments which they were coerced into making, their statement that they would not bring such actions did not in the least affect their right to bring such actions. There was no estoppel in the matter, since the Government was not misled, and did nothing which would work to its disadvantage on the strength of the statement.

The contracts of carriage entered into between the steamship company and the steerage passengers were not put in evidence in the Court below, and their terms do not appear in the record. It cannot be presumed from this fact that the contracts of carriage imposed any duty upon the steamship company toward a passenger after the voyage ended, or during the voyage, more than the duty required by law.

POINT VII.

The expenses in question were properly incurred in the process of "regulating" immigration.

To "regulate" is defined as, "to adjust by rule or established mode; to govern by or subject to certain rules or restrictions; to put or keep in good order."

The immigrant fund raised by the Head Tax was directed to be used under the statutes for the purpose of regulating immigration. Regulating necessarily involved examination of aliens to decide upon their fitness for entry into the country, and examination required detention. If this detention is lengthened by the illness of a steerage passenger, it is still a part of and incidental to the process of regulating immigration, and consequently should be paid out of the Head Tax money.

The Government might well require aliens who were able, to pay the cost of their maintenance and treatment, since they are the ones primarily liable for such expenses; the steamship company not being liable either primarily or as sureties. The obligation of the steamship company toward the steerage passenger ends with the voyage except in cases where it is required to take the immigrants back to the country from whence they came, because of their unfitness to be admitted to the United States.

While it cannot be disputed that a temporary removal of a steerage passenger for detention and

examination does not constitute a landing, nevertheless the voyage so far as that passenger is concerned has ended, and the duty of the carrier to the passenger has thus been terminated. This is quite a different thing from the statutory duty imposed to carry the immigrant back to his own country if found unfit to be admitted to the United States.

Suppose an incoming steerage passenger has been removed to Ellis Island, or to a public hospital for detention and examination, without anything being arranged between the steamship company and the Government as to who should pay the expenses? It is found that the alien is ill and in need of treatment. In such a case what are the rights of the parties? If under the law the steamship company was liable to pay the expenses of maintenance and treatment of such an alien, no contract was necessary and it could be made to pay at the suit of the Government, if not at the suit of the alien. If it was not liable for such charges, its agreement to pay would be without consideration. Suppose in such a case the Government should say to the steamship company, "It is your duty to pay these charges, and you must agree with us that you will pay them." If the company then made the agreement to pay, on what consideration would such an agreement be sustained?

As the Head Tax money is admittedly more than sufficient to pay these charges, the effect of a decision against the Appellee on the merits will mean that the Government will retain, for general governmental purposes, money collected from

aliens for the purpose of regulating immigration, and the same amount again collected from steamship companies for the same purpose.

POINT VIII.

Various contentions made in this case on the part of the Government are not supported by the record.

The Government contends that the record shows no ruling by the Secretary of Commerce and Labor made in the so-called *Toth* case sustaining the contention of the steamship company (Brief, page 5). The record shows that the Solicitor for the Department wrote to the steamship company giving his own opinion and stating that Secretary Strauss had adopted the views of the steamship companies. The company had a right to rely on this official representation.

It also appears that for some months after this ruling, the Government discontinued the practice of compelling the steamship companies to pay the charges in question, although the Government's brief says that the ruling of Commissioner Strauss was not followed. The charges for which the Government sued in the former action against the Holland-America Line accrued during the months while this ruling was being followed and the steamship companies were not coerced into paying. Certainly this ought to be good evidence that such a ruling was made, and certainly the ruling, if made, was by competent authority as meant in the letter written by the Appellee in 1894 agree-

ing to pay such charges until the case had been decided differently by competent authority.

On Page 15 of the Government's brief the statement is made that the expense in question had to be incurred and paid, and that they could not be paid by the aliens. Why not? It is also said at the same place that there was no authority for the United States to pay it, citing a decision of the Comptroller of the Treasury. The decision of Secretary Strauss may be quoted to the contrary, although neither one of those officials was in a position to make a final decision on what the law of the case then was.

POINT IX.

Upon the main argument and the reargument and the briefs submitted for the Appellee the judgment of the Court of Claims should be affirmed, with costs.

LUCIUS H. BEERS,
Attorney for Appellee.

HOWARD MANSFIELD,
FRANKLIN GRADY,
Of Counsel.

UNITED STATES *v.* NEDERLANDSCH-AMERIKAANSCHE STOOMVAART MAATSCHAPPIJ (HOLLAND-AMERICA LIJN.)

APPEAL FROM THE COURT OF CLAIMS.

No. 53. Argued January 28, 1920; restored to docket for reargument October 11, 1920; reargued November 17, 1920.—Decided December 6, 1920.

A foreign steamship company alleged that, under duress practiced by the immigration authorities, it paid bills rendered by them under color of the Immigration Act, for maintenance and medical care furnished by the United States to certain immigrants who, after landing from the company's ships, were temporarily detained before being admitted to the country, and it claimed reimbursement under the Tucker Act, upon the ground that the exactions were in violation of its rights as an alien subject, secured by the Constitution, treaties and laws of the United States. *Held*, that the claim, being founded on alleged torts of federal officials, was not within the Tucker Act or the jurisdiction of the Court of Claims. P. 155.

53 Ct. Clms. 522, reversed.

THE case is stated in the opinion.

Mr. Assistant Attorney General Davis for the United States.

Mr. Howard Mansfield, with whom *Mr. Lucius H. Beers* and *Mr. Franklin Grady* were on the briefs, for appellee:

The claim sued on is founded both upon a law of Congress and upon a regulation of an executive department of the Government, and the Court of Claims clearly had jurisdiction. *Patton* v. *Brady*, 184 U. S. 608, 611; *Dooley* v. *United States*, 182 U. S. 222; *United States* v. *Lynah*, 188 U. S. 445.

The cases cited by the Government hold, what is not disputed, that Congress has not permitted suits against the Government for mere torts, nor for tortious acts of its representatives, unless the claim is founded upon the Constitution, some law of Congress, or some regulation of an executive department. Attention is not drawn to any decision of this court holding that when an officer or other representative of the United States, professing to act under a law of Congress, wrongfully exacts money from an individual, and pays the money into the United States Treasury, the United States has not authorized a suit for the recovery of such money. Distinguishing: *Ball Engineering Co.* v. *White & Co.*, 250 U. S. 46; *Tempel* v. *United States*, 248 U. S. 121; *Basso* v. *United States*, 239 U. S. 602; *United States* v. *Buffalo Pitts Co.*, 234 U. S. 228; *Peabody* v. *United States*, 231 U. S. 530; *Crozier* v. *Krupp*, 224 U. S. 290; *Harley* v. *United States*, 198 U. S. 229; *Russell* v. *United States*, 182 U. S. 516; *Schillinger* v. *United States*, 155 U. S. 163; *Langford* v. *United States*, 101 U. S. 341; *Gibbons* v. *United States*, 8 Wall. 269.

These cases hold no more than that the United States cannot be sued for a tort, unless the case arises (1) under the Constitution, (2) under a law of Congress, or (3) under a regulation of an executive department.

No liability was imposed by law upon claimant to pay the hospital expenses of aliens ultimately admitted to the United States.

Claimant was under no contract obligation to pay such expenses.

These expenses were payable out of the head tax fund, provided by Congress for that purpose, and ample in amount.

The payments having been involuntarily made under compulsion and duress, claimant is entitled to recover the amounts paid.

MR. JUSTICE DAY delivered the opinion of the court.

A suit was brought in the Court of Claims by the Holland-American Line to recover from the United States for the cost of the maintenance and medical care furnished by the United States for certain aliens brought by the plaintiff to this country on the steamers of its line which it had been required to pay.

The petition sets forth that the United States immigration officials temporarily detained some aliens in hospitals because they were alleged to be suffering from temporary illness, or accompanied aliens who were so suffering, and subsequently permitted them to enter the country; the aliens were detained and subsequently admitted under the act of Congress known as the Immigration Act, passed February 20, 1907, c. 1134, 34 Stat. 898. It is stated that the Secretary of Commerce and Labor and the Commissioner General of Immigration, and their subordinates, claiming to act under the authority of the Immigration Act, rendered to the petitioner from month to month bills for the hospital treatment and maintenance of the aliens so detained and subsequently admitted. Certain regulations of the Commissioner General of Immigration are cited; and it is alleged that the United States officials threatened that, if the bills were not paid, thereafter all aliens so brought to this country would be held on board ship until their application for admission to the United States should be finally adjudicated. It is set forth that on all vessels arriving in the port of New York there were aliens who were temporarily detained and subsequently admitted; that detention on board ship would have delayed the sailing of petitioner's vessels for periods varying from a few days to several weeks. The threats were actually carried out, at least in one instance, and if vessels were so detained the result would have been not merely great inconvenience and financial loss to the petitioner,

but a complete disruption of oceanic commerce in the port of New York and the United States. "Consequently, the petitioner paid, under duress and involuntarily, the bills, when rendered."

It is alleged that the exaction of such payments of the petitioner, and the making of such threats, were entirely without warrant of law; that the Immigration Act provides that, where a suitable building is used for the detention and examination of aliens, the immigration officials shall there take charge of such aliens and the transportation companies shall be relieved of the responsibility for their detention thereafter; that there was in the port of New York a suitable building for the detention and examination of aliens; that the Immigration Act required petitioner to pay the United States $4.00 for each alien entering the United States on its vessels; that the aliens whose hospital and maintenance expense bills were rendered to and paid by the petitioner, were detained and examined and subsequently admitted to the United States pursuant to the requirements of the Immigration Act; that special appropriations have been made for all expenses of the enforcement of the laws regulating the immigration of aliens into the United States, so that there has always been an available fund in the United States Treasury for the payment of the expenses of regulating the immigration of aliens into the United States, including the hospital bills referred to above.

Petitioner recites disagreement, as to such charges, between the Secretary of Commerce and Labor and the steamship companies transporting aliens to the United States, and sets forth that an action was brought by the United States in the United States District Court for the Southern District of New York against the petitioner, to recover hospital charges for aliens brought to the port of New York and temporarily detained and subsequently admitted. A judgment in favor of the Company was

subsequently reviewed by the Circuit Court of Appeals and was there affirmed. (See 212 Fed. Rep. 116, affirmed by an equally divided court, 235 U. S. 686.)

It is further alleged that the exaction from the claimant of the above mentioned hospital charges under duress was in violation of its rights and privileges secured to petitioner as a subject of the Kingdom of the Netherlands under the Constitution of the United States, by the treaties between the United States and the Kingdom of the Netherlands and the laws of the United States; that the amounts thus unlawfully exacted from the claimant were remitted to the Commissioner of Immigration at the port of New York as required by him.

There being no demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises on the part of the United States, the Court of Claims directed a general traverse under the rules of the court, and afterwards made findings of fact, and, substantially following the decision of the Circuit Court of Appeals, *supra*, held the United States liable for the payments exacted.

As to the claim that the plaintiff had bound itself by contract to pay these charges, the court held that the claimant was coerced into making the contract by threats of the defendant which would have destroyed the plaintiff's business if ever executed.

The Government contends that the claim thus presented was one sounding in tort, and, consequently, not within the jurisdiction of the Court of Claims, and that the petition should have been dismissed.

The jurisdiction of the Court of Claims rests upon § 145 of the Judicial Code, reënactment of the Tucker Act of March 3, 1887, c. 359, 24 Stat. 505. The jurisdiction conferred includes:

"All claims (except for pensions) founded upon the Constitution of the United States or any law of Congress,

upon any regulation of an Executive Department, upon any contract, express or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty if the United States were suable."

We think that the statement of the substance of the petitioner's claim, as above set forth, shows that it rested upon payments alleged to have been made under duress because of the wrongful and tortious acts of officials of the United States Government acting without authority of law in coercing the claimant to pay the sums demanded.

In many decisions of this court it has been held that by the provisions of the Tucker Act the Government did not subject itself to liability for the torts or wrongful acts of its officers. *Gibbons* v. *United States*, 8 Wall. 269; *Morgan* v. *United States*, 14 Wall. 531; *Hill* v. *United States*, 149 U. S. 593; *Schillinger* v. *United States*, 155 U. S. 163; *United States* v. *Buffalo Pitts Co.*, 234 U. S. 228; *Tempel* v. *United States*, 248 U. S. 121; *Ball Engineering Co.* v. *White & Co.*, 250 U. S. 46.

The appellee relies upon and quotes certain expressions found in the opinion delivered in *Dooley* v. *United States*, 182 U. S. 222. In *Basso* v. *United States*, 239 U. S. 602, suit was brought in the Court of Claims for the illegal arrest and imprisonment of the claimant upon a charge of having imported goods from the United States into Porto Rico without having made entry of the same under an act of Congress which the appellant alleged was not in force in Porto Rico. It was alleged that the court was without jurisdiction, and that, therefore, the trial, conviction and sentence of imprisonment deprived him of his liberty without due process of law in violation of the Constitution. The United States filed a general

traverse of the petition, and subsequently moved to dismiss upon the ground that the court had no jurisdiction as the action sounded in tort. This motion was sustained in the Court of Claims, and an appeal taken to this court. Speaking of the contention of the appellant that the Court of Claims had jurisdiction, this court said:

"He, however, contends that the Court of Claims has jurisdiction under the Tucker Act over claims *ex delicto* founded upon the Constitution of the United States. And, this, he further contends, is supported by the recent decisions of this court, and relies especially upon *Dooley* v. *United States*, 182 U. S. 222.

"But that case did not overrule *Schillinger* v. *United States*, 155 U. S. 163, which, counsel says, holds directly contrary to his contention and that he has not the ingenuity to suggest how the court can now decide the case at bar in appellant's favor without at least by implication overruling the *Schillinger Case*. We are not disposed to overrule the case, either directly or by implication. . . .

"The *Dooley Case* and cases subsequent to it which are relied upon by appellant concerned the exaction of duties or taxes by the United States or its officers or property taken by the Government for public purposes. In such cases jurisdiction in the Court of Claims for the recovery of the duties and taxes or for the value of the property taken was declared.

"In the case at bar (assuming as true all that is charged) there was a wrong inflicted, if a wrong can be said to have been inflicted by the sentence of a court legally constituted after judgment upon issues openly framed by the opposing parties both of fact and the applicable law, whether that law was §§ 2865 and 3082 of the Revised Statutes or the Constitution of the United States. But conceding that a wrong was inflicted through these judicial forms, the case nevertheless is of different character from the *Dooley*

Case, as was also the *Schillinger Case*. The latter case passed upon the jurisdiction of the Court of Claims in actions founded on tort and declared the general principle to be, based on a policy imposed by necessity, that governments are not liable (155 U. S., p. 167), 'for unauthorized wrongs inflicted on the citizen by their officers, though occurring while engaged in the discharge of official duties.' And it was further said (p. 168): 'Congress has wisely reserved to itself the right to give or withhold relief where the claim is founded on wrongful proceedings of an officer of the Government.' *Gibbons* v. *United States*, 8 Wall. 269, 275; *Morgan* v. *United States*, 14 Wall. 531, 534."

The principle, reaffirmed in the case just quoted, is applicable here for the reason that the claim presented sounded in tort, and was in substance an action to recover for the wrongful acts of the United States officials in compelling the claimant to pay under duress and without authority of law the sums sued for. Following the well-established construction of the Tucker Act, as declared in many cases in this court, we think that the Court of Claims should have dismissed the petition because it presented a claim not within its jurisdiction. The judgment of the Court of Claims is reversed, and the cause remanded to that court with instructions to dismiss the petition.

Reversed.